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COMMERCIAL LAW AND INTERSTATE COMMERCE LEGAL FORMS

By

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CHAPTER I.

INTRODUCTORY.

Section 1. Legal Conceptions.

The four great legal conceptions of the law are those of rights, duties, wrongs and remedies. Although their historical origin was, in point of time, in the reverse order,¹ the logical method of discussion is in the order given.

Rights are of two classes; the general rights which a person has against all members of the community, and those special rights which he has as against certain special persons. Wherever there is a right, there is a duty on the part of others not to infringe this right. In the case of a general right, the duty of not infringing it rests upon everyone; while in the case of special rights, the duty of not infringing it rests upon those persons against whom the right exists. Whenever any person, upon whom the duty of not infringing any right belonging to another party rests, violates such duty, there is a wrong. If the violation was one of the general rights, created by law, the wrong is a tort as against the individual injured, and may also be a crime as against the public; if the violation, on the other

¹ See Robinson's *Elements of American Jurisprudence*, p. 155; Putney's *Introduction to the Study of Law*. Sec. 2; Street's *Foundations of Legal Liability*, Vol. III, pp. 3-4.

hand, was of one of those special rights existing only against certain persons, and which was created by agreement between such persons, then the wrong is a breach of contract. A legal remedy is the redress which the law furnishes for such legal wrongs as are committed.

The connection between rights, duties, and wrongs, must be carefully remembered in order to secure a clear understanding of the principles of law. There can be no duty except where there is a correlative right, and there can be no wrong except where there is a right violated.

Section 2. Divisions of the Law.

The first classification of the law is that into International Law and National or Municipal² law. National or Municipal law is in turn divided into Public Law and Private Law. Public Law is subdivided into Constitutional Law, the Law of Public Corporations, and Criminal Law.

Private Law is first divided into Substantive Law and Adjective Law. Substantive Law treats of rights with their correlative duties and wrongs, while Adjective Law is devoted to the treatment of the remedies provided for the violation of duty, and the punishment for wrongs.

Under the head of Substantive Law are found the subjects of Property, Real and Personal, Contracts, together with their various subdivisions, Equity Jurisprudence including Trusts, and Torts.

² The term Municipal is often used in connection with the government of a City, but its use in the study of private law is as here given.

Section 3. Plan of the Book.

Although the law has well been described as a "seamless whole" and although each branch of the law is more or less connected with each other branch, still only certain divisions of the law are of importance in a treatise on Commercial Law. In this book certain of the subjects taught in a regular law course will be treated fully; other subjects will be treated more briefly, while other subjects will be entirely omitted.

The corner stone in the study of law is the subject of Contracts. This subject will be taken up first in the book. This will be followed in order by the various subdivisions of contracts as follows: Agency, Partnership, Sales, Bailments and Carriers, Bills and Notes, Guaranty and Suretyship and Insurance. A more condensed account will then be given of the subjects of Torts, Damages, and Equity Jurisprudence, and of those crimes which are peculiarly connected with Commercial Law, and the two final chapters of the book, will be respectively devoted to Bankruptcy, and the Regulation of Interstate Commerce.

The chapter on the regulation of commerce is supplemented by the summary of recent legislation which will be found in Part IV of "Railway Transportation—History, Operation and Regulation." This includes the provisions of the Transportation Act, 1920, and the latest amendments to the Interstate Commerce Act.

CHAPTER II.

CONTRACTS.

Section 4. Definition.

Among the many definitions of contracts which have been given by various law writers and judges, the one most generally followed has been that of Blackstone, who defines a contract as “an agreement, upon sufficient consideration to do, or not to do, a particular thing.”

This is the definition which was adopted by Chief Justice Marshall and has been followed by the Supreme Court of the United States.

The following five requisites are generally said to be necessary for the creation of a binding contract:

I. Competent parties.

II. An agreement between these parties reached by an offer made by one and accepted by another.

III. This agreement must be for a lawful purpose.

IV. It must be based upon a consideration, and

V. It must be made with all the formalities required by law.

These five requisites will be taken up in the following sections.

Section 5. Parties to a Contract.

There must, of course, be at least two parties to every contract. No person can make a contract with

himself; neither can a person in his own capacity contract with himself in a representative capacity, unless with the express consent of the party he represents, and in such a case the contract is in reality made by the represented party himself. There is no limit to the number of persons who may become parties to a single contract.

In general, every person *sui juris* may enter into a contract.

Section 6. Parties Incapable of Contracting.

The following classes of persons lack the power of contracting either wholly or in part:

Minors.

Persons, who are insane or otherwise of unsound mind.

Drunken persons.

Spendthrifts, for whom guardians have been appointed.

Married women.

Section 7. Minors.

A minor is a person who has not reached the legal age fixed by the law of the state or country in which he lives. Under the Common Law, this age was twenty-one years, and the same age is still fixed for males in each of the states of this country at the present time. In the case of females the legal age is eighteen years in a little more than half the states, and twenty-one in the balance. A person becomes of age the day before his twenty-first birthday.

In general, the contracts of a minor are voidable.

By this is meant that they may be rescinded at the option of the minor, but if not thus rescinded will be good. It was formerly held that certain contracts of a minor, particularly those affecting real estate, were absolutely void, but this distinction was of no particular benefit to the minor, and it is now held that all of a minor's contracts are voidable, except those few which the law makes binding.

The most important class of contracts upon which a minor will be held bound are those for necessities furnished to him at his own request. This principle works to the advantage of the minor himself, as otherwise he might be unable to secure the means of subsistence. A rather broad meaning is given to the term "necessaries," although what will be considered necessities will vary in different cases.

The term necessities includes all such articles and services as are reasonably necessary to supply the personal wants of a person in the particular circumstances and conditions of life of the minor.¹

Under the term "necessaries" will also be included food, clothing, and lodging, medical attendance, and instructions in elementary schools, or while learning a trade. The liability of a minor, however, on his contract for necessities differs from that of an adult. Strictly speaking, a minor is not bound on his promise to pay for the necessities, but on an implied promise to pay what such articles are reasonably worth. In fact, the liability of the minor for the necessities furnished to him falls rather under the head of quasi contracts than that of pure contracts.²

¹ Benjamin on Contracts, p. 152.

² See Sec. 30.

In general, it may be said here, that, with some exceptions, a minor is liable on his quasi contracts the same as an adult.³

Another class of contracts upon which a minor is liable are those made in settlement of some tort for which he is legally bound. The extent of the liability of a minor on his torts is much broader than on his contracts, and as a minor is already liable thereon and as the law encourages the settlement of suits rather than litigations, it permits a minor to make a settlement for such tort. If, however, the settlement is an unreasonable one, or in any way an unfair advantage was taken of the minor, the settlement may be set aside.

Finally, a minor is absolutely bound on those contracts which the law authorizes him to make, such as, for instance, a contract for enlistment in the United States Army. Except in the case just mentioned, a minor may disaffirm a contract which he has made at any time during his minority, or within a reasonable time thereafter. Such disaffirmance may be either express or implied. An implied disaffirmance may be affected by actions inconsistent with the intention to ratify a contract. In general, when a minor disaffirms a contract, he must return whatever of value he has received if it is in his power so to do. A minor, when he becomes of age, may ratify a contract, either expressly or by implication. Such ratification will be effected by failure to disaffirm within a reasonable time after the minor has reached his majority.

³ *Id.*

Section 8. Insane Persons, Drunken Persons and Spendthrifts.

The making of a contract requires the meeting of the minds of the parties, and as an insane person is incapable of understanding the nature of his acts, in theory, it is impossible for a person of this character to make any contract at all, and all of his attempted contracts are, in theory, absolutely void. In practice, however, while the contracts of a person who has been adjudged insane are thus considered void, the contract of other parties of unsound mind will be merely voidable at his option, or of that of the person qualified to choose for him. Certain contracts of insane persons will be held valid. Such are contracts created by law, and contracts for necessities, including necessities for his wife and children.

Drunkenness may be a defense to a contract if the party was so drunk as to be unaware of the nature of his act. In such cases the contract is voidable. The law here differs from that in the case of torts or crimes, where drunkenness is no defense.

A spendthrift under the Common Law, and in a few States at the present time, may be adjudged incapable of conducting his affairs, and a conservator be appointed for him. In such cases his contracts become voidable.

Section 9. Married Women.

In no branch of the law has there been more radical changes than in that governing married women. Under the Common Law, married women were absolutely without the power to contract, and their con-

tracts were not merely voidable, but void. The right to contract was first given to women, to a very limited extent, by the courts of equity, who permitted her to contract and to sue and be sued in regard to her "separate estate." At the present time the disabilities of a married woman in regard to contracting have been almost entirely removed by statute. The law differs somewhat in the various states; some states retaining the disabilities to a greater extent than others. The two classes of contracts which are generally the last which a married woman is permitted to enter into are those of suretyship and partnership.

Section 10. Aliens.

The law is now much more favorable to aliens than in former times. A resident alien will have the same rights of contracting as a citizen. Some restrictions are placed upon the contracts of a non-resident alien even in a friendly country, the most important being that in many of the States of this country a non-resident alien cannot purchase real estate.

In case of war contracts between citizens of the hostile countries residing in their respective countries will be suspended. An alien enemy, however, may be sued in the courts on their contracts, and in such a case he will be given the right to appear and defend.

A country in case of war has the right to confiscate the debts owed by its citizens to the citizens of the hostile country, but this right has been seldom exercised in modern times.

Section 11. The Making of a Contract.

As the first requisite to a valid contract is competent parties, so the second requisite is that such competent parties shall mutually agree upon the terms of the contract. As it is commonly expressed, there must be a meeting of the minds of the parties in order to make the contract binding. Such a meeting of minds cannot take place spontaneously or by accident, and in the making of every contract one party must take the initiative and make the proposal to the other. The acceptance of the offer makes the contract. Every true contract can only be made as the result of an offer and acceptance.

Section 12. The Offer.

An offer is a proposal made by one person to another that they enter into a certain agreement. The proposed agreement may be either for the sale and purchase of property, for services to be performed by one for the other, or for any other legal undertaking.

An offer may contemplate the performance of the agreement immediately or at some time in the future. The offer may be either express or implied.

An express offer is one where the terms of the proposed agreement are presented in express words, either oral or written. An implied offer is one implied from the actions of the party making the offer, or from the words which are not sufficient to constitute an express offer. An implied offer, if accepted, is as binding as an express one.

Important contracts are in general made as the result of express offers, but in the vast majority of

the minor every-day contracts the offer is an implied one. To take a simple and common illustration of this rule; the running of the street-cars by the Street Car Company is an implied offer to carry any person who desires to be carried on the payment of five cents (or whatever the customary fare may be).

An offer once made remains open for acceptance for a reasonable time or until notice is given of its withdrawal. Unless the offer was made for a valuable consideration, it can be withdrawn at any time before being accepted, even although according to its terms it was to remain open for a certain definite time. An offer which by its terms was to remain open for a certain length of time is terminated at the end of that time without notice. If no time is provided during which the offer is to remain open, it will lapse at the end of a reasonable time. What is a reasonable time must be determined in accordance with all the facts and circumstances of the particular case, and will vary greatly in different cases. If an offer is accepted before it has lapsed through the expiration of the time for which it was made, or of a reasonable length of time when no time was provided, the contract is completed and the offeror is bound thereby, even although he intended to withdraw the offer. If, however, the person to whom the offer was made first makes a counter proposition, and upon this being rejected accepts the original proposition, the person making the offer is not bound by the contract, unless he still desires to make it; the reason being that the making of the counter proposal was a rejection of the original proposal.

For example, if A offers to sell B certain personal

property for \$25.00, and B thereby offers \$20.00 for it, and upon A rejecting this counter offer, B then agrees to pay \$25.00, A, if he chooses, can refuse to take it, as the offer to pay \$20.00 was a rejection of the proposal of A to sell for \$25.00. Furthermore, if the person to whom the offer is made rejects it, he cannot afterwards accept it so as to compel the offeror to stand by his original proposal.

Finally, an offer terminates upon the death or insanity of the party making the offer. An exception to this last statement will be found in the case where the offer was for the sale of property, and a consideration had been given in return for the agreement that the offer should remain open for a definite period.

Section 13. Acceptance.

An offer gives rise to a contract upon its being accepted. Acceptance must be by the person to whom the offer was made. If, however, the offer was made to a class, or to the public generally, it can be accepted by any one of such class, or by any one of the public. The acceptance must be communicated to the party making the offer or their duly authorized agent. In general, an agent making an offer is authorized to receive the acceptance. There may be an implied acceptance as well as an implied offer. Thus, if A offers B a certain sum of money if he will do a certain work, and B does this work within a reasonable time, this will be an implied acceptance of the offer. Selling goods in accordance with an order is an acceptance of the order. If a party uses the mail or telegraph for the transmission of his offer, he makes the mail or telegraph his agent, and the person

to whom the offer was made has the right to use such agency in his acceptance, and the offer is accepted, and the contract binding, as soon as the answer has been deposited in the mail or given to the Telegraph Company. This is the rule, except in Massachusetts, where a letter containing an acceptance must be received by the person making the offer before the contract is completed.

Section 14. Illegal Contracts.

A contract must be for an object permitted by law. It is very plain that the law will not enforce an agreement for the accomplishment of an object which the law prohibits. The most important illegal contracts are the following:

- Agreements in restraint of trade.

- Sunday laws.

- Wagers.

- Usury.

- Ultra vires agreements.

- Agreements which tend to prejudice a nation in relation with other nations.

- Agreements which tend to injure the public service.

- Agreements which tend to increase litigation.

- Agreements which tend to obstruct justice.

- Agreements which involve immorality.

- Agreements in restraint of marriage.

- Agreements, lawful in themselves, which tend to further an unlawful purpose.

Section 15. Agreements in Restraint of Trade.

Perhaps that class of illegal contracts, concerning which there has been the greatest amount of litigation.

tion, are contracts in restraint of trade. The welfare of any community requires competition in all branches of industry (except those few in which competition is impracticable), and it is against public policy to allow a man to bind himself not to engage in the occupation with which he is the most familiar. The rule against agreements in restraint of trade is not as strict as it was formerly. At the present time, while an agreement, without limitations whatever as to time or space, not to carry on a certain occupation is void, contracts not to engage in a certain business for a certain period, within a certain limited area, is valid. The limitations both as to time and space must be reasonable, and what constitutes a reasonable limitation is a question of fact depending upon all the circumstances in the particular case, especially upon the nature of the business or occupation.

Section 16. Usurious Contracts.

At one period in the history of English law, the taking of interest was prohibited to all persons, except a certain class in the community. Later, when the taking of interest by all first began to be allowed, limitation was placed upon the amount which might be charged, and any rate, upon which the parties agreed, could be enforced. The third stage in the history of this branch of the law came when statutes were passed in England, and also in most of the states of this country, fixing the maximum rate which might be charged. A difference is to be observed between the maximum rate which may be charged in any state, and what is known as the legal rate of interest, which is the amount charged on debts which

bear interest where no rate is fixed by agreement. The legal rate, the rate allowed by contract and the penalties for violating the law against usury vary greatly in the various states. In some states the penalty for violating the law against usury is the loss of both principle and interest. In other states the loss of all interest, and still others merely the loss of the interest above the legal rate. The legal rate and the highest lawful rate in the different states and territories is as follows:

States and Territories—	Legal Rate.	Rate Allowed by Contract.
Usurious contracts.		
Alabama	8	8
Arkansas	6	10
Arizona	6	Any rate
California	7	Any rate
Colorado	8	Any rate
Connecticut	6	6
Delaware	6	6
District of Columbia.....	6	10
Florida	8	10
Georgia	8	8
Idaho	7	12
Illinois	5	7
Indiana	6	8
Iowa	6	8
Kansas	6	10
Kentucky	6	6
Louisiana	5	8
Maine	6	Any rate
Maryland	6	6

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States and Territories..	Legal Rate.	Rate Allowed by Contract.
Massachusetts	6	Any rate
Michigan	5	7
Minnesota	7	10
Mississippi	6	10
Missouri	6	8
Montana	8	Any rate
Nebraska	7	10
Nevada	7	Any rate
New Hampshire.....	6	6
New Jersey.....	6	6
New Mexico.....	6	12
New York.....	6	6
North Carolina.....	6	6
North Dakota.....	7	12
Ohio	6	8
Oklahoma	7	12
Oregon	6	10
Pennsylvania	6	6
Rhode Island.....	6	Any rate
South Carolina.....	7	8
South Dakota.....	7	12
Tennessee	6	6
Texas	6	10
Utah	8	Any rate
Vermont	6	6
Virginia	6	6
Washington	6	12
West Virginia	6	6
Wisconsin	6	10
Wyoming	8	12

Penalties for usury differ in the various states.

The states of Arizona, California, Colorado, Maine, Massachusetts (except on loans of less than \$1,000), Montana, Nevada, Rhode Island, Utah, and Wyoming have no provisions on the subject.

Loss of principal and interest is the penalty in Arkansas and New York.

Loss of principal in Delaware and Oregon.

Loss of interest in Alabama, Alaska, District of Columbia, Florida, Idaho, Illinois, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, North Carolina (double amount if paid), North Dakota (double amount if paid), Oklahoma Territory, South Carolina, South Dakota, Texas, Virginia, Washington (double amount if paid), Wisconsin, and Hawaii.

Loss of excess of interest in Connecticut, Georgia, Indiana, Kansas, Kentucky, Maryland, Missouri, New Hampshire (three times), New Mexico, Ohio, Pennsylvania, Tennessee, Vermont, and West Virginia.

Usury laws do not apply to the loan of chattels, nor according to the weight of authority is it usury to charge compound interest, or bank-discount.⁴

Section 17. Contracts Illegal Because of Their Effect on the Government.

Several classes of contracts are held to be illegal, or against public policy, because of their prejudicial effect upon the government of the state or nation. Under this head are included agreements which tend to prejudice a nation in its relation with other na-

⁴See volume on Currency, Banking and Exchange, § 60.

tions; agreements which tend to injure the public service; agreements which tend to obstruct justice; and agreements which tend to increase litigation.

The last class mentioned was formerly of much greater importance than at the present time. Among the contracts formerly prohibited as coming under this head, but now permitted, are the assignment of a chose in action, and the agreement of the lawyer to take a case on a contingent basis.

Section 18. Gambling Contracts.

Gambling contracts were originally perfectly valid under the Common Law, and were enforced to the same extent as any other contract. The agreement of one party to the contract to do a certain thing if a certain event took place was considered a valuable consideration for the agreement of the other to do a certain thing if the said event did not take place.

Finally, the courts began to appreciate the demoralizing influence of this class of contracts, and began to seek reasons for refusing to enforce them. Under the Common Law, however, the judges could only refuse to enforce such contracts on account of some peculiar feature of the case. Later, gambling contracts and wages were prohibited by statute.

In nearly all the states of this country there are now statutes regulating this subject, although in a few states the courts have held such contracts to be void as against public policy, even in the absence of statutory provisions.

Section 19. Other Illegal Contracts.

Under the Common Law, contracts made on Sunday are valid. But in many states they have been made invalid by statute. The question is now a statutory one in this country, such contracts being valid in the absence of any statutory provisions. Sunday laws have uniformly been held to be constitutional, and not to be an illegal interference with the religious liberty of the people.

The law seeks to encourage marriage, and any contract or agreement in total restraint of a first marriage, or imposing an unreasonable restraint upon the same, are held invalid. Reasonable restraints, such as the prohibiting of a marriage with a certain person or with a member of a certain nationality, are valid, as are also agreements against a second marriage. Marriage brokerage contracts are always void.

Contracts between husband and wife for a present separation are valid, but not one for a future separation.

All contracts for performance of immoral acts or anything which would aid in the performance of such immoral acts are universally held void.

Section 20. Agreements Lawful in Themselves to Further an Unlawful Purpose; and Agreements Illegal Only in Part.

Any contract or agreement made with the object of furthering an unlawful purpose, even although the contract in itself is lawful, is illegal.

An illustration of this would be in the case of the

purchase of property to be used in the commission of crime.

In the case of agreements partly legal, and partly illegal, if the contract is capable of being separated, the legal portion is valid, and the illegal portion void. If the contract is inseparable, the whole contract is void.

Section 21. Consideration.

Consideration is the thing or act of value given to, or done for, one party to a contract, or promise made to him at his request, either express or implied, in return for the thing given, act done, or promise made on his part.

Under the early Common Law, a consideration was not necessary for the validity of a contract. A consideration was first required in those contracts which were enforced by the action of *assumpsit*. As a scope of this action was extended and it became the principal action *ex contractu*, the cases in which a consideration was required were also extended.

At the present time, a consideration is required in all contracts except those under seal. By some authors, and in some decisions, it is stated that the seal is evidence of a consideration, but the correct view is that a promise under seal requires no consideration.

The various forms which a valid consideration may take, are thus outlined by Mr. Street in his work on "Foundations of Legal Liability":

"With the death of Elizabeth (1603) the formative period in the history of consideration came to a close and English contract law was ready to enter

upon its modern career. It will be noted that several forms of consideration had now appeared. First in importance is that detriment to the promisee (1505) which is necessary to give validity to the simple unilateral promise. This is the original form of the assumptual consideration, and is the type which all other forms of consideration are commonly but erroneously supposed to be resolvable. Next in importance is the consideration of mutual promises. (1588) Least notable of the three different types of the assumptual consideration is the consideration of legal duty or precedent debt (Cir. 1550).

It is not possible by any valid process to resolve these different sorts of consideration into one. No present detriment to the promisee is found either in the consideration of legal duty or in mutual promises. In the one case the detriment is past, having been incurred when the debt was created. In the other there is a contemplated detriment to both parties, i. e., future performance of the respective promises; but the contract is valid from the time the mutual promises are made. It is indispensable that consideration in the sense of detriment should concur with the promise.

Of the recompense, or benefit, to the grantor of real property, which is necessary to pass the use in equity to a stranger; and of love and affection, which is sufficient to support a covenant to stand seized to the use of one closely related by blood or marriage, we take no further account, as these are not assumptual considerations."

A mere benefit to the promisor, where there are no mutual promises and no detriment to the prom-

isee, is not a sufficient consideration to support the promise.

Mutual promises will always constitute mutual considerations. In such cases, the promise by one party is the consideration for the promise by the other. This is one of the most common forms which the consideration takes in modern contracts.

Forbearance to exercise a legal right is also a good consideration for a promise, but a promise to do something which a person is already legally bound to do, or to forbear to do something which the party has no right to do, is not a consideration and will not support a promise, or an action, on the part of another person.

The payment of a portion of an undisputed debt is not a good consideration for a receipt in full. Even if a receipt in full is given the payment only discharges the debt pro tanto. A part payment in money and some other article of personal property, no matter how small its value, may be accepted in full settlement, or the creditor may make a gift of the part unpaid, or give a release under seal in full settlement. In case of dispute as to the amount due, a compromise settlement will be valid, the concessions on each side being mutual considerations for the concessions on the other. Furthermore, the law favors the settlement of disputes in order to avoid unnecessary litigation.

Marriage is a valuable consideration and will uphold any promise made in consideration thereof. A moral obligation is never sufficient consideration for a promise. In this respect the Common law differs from the law of those countries which have adopted

their legal systems from the Roman or Civil law. If the consideration for a promise wholly fails, then the promise is one without consideration, and is void.

Section 22. Required Formalities in Making a Contract.

In the making of a contract all the formalities required by the law of the place where the contract is made must be strictly followed. The most important provision of this character are those requiring certain contracts to be in writing.

Section 23. Statute of Frauds.

The term "Statute of Frauds" is the name generally applied to those statutes, existing in England and the different states, requiring contracts on certain subjects to be in writing. The original statute of frauds was entitled "An Act for the Prevention of Frauds and Perjuries," and was enacted in 1676 to take effect in 1677. The purpose of this act was thus set out in its opening sentences: "For prevention of any fraudulent practices, which are commonly endeavored to be upheld by perjury and subornation of perjury." From this arose its name, the reason for which is not always perceived by the beginner in law.

The provisions of the original statute were very numerous, but only two sections, the fourth and the seventeenth, have been at all generally re-adopted in the statutes in this country.

The wording of these two sections is as follows:

"And be it further enacted by the authority aforesaid, That from and after the said four and

twentieth day of June no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of him own estate; (2) or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person; (3) or to charge any person upon any agreement made upon consideration of marriage; (4) or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; (5) or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." * * *

"No contract for the sale of any goods, wares or merchandise, for the price of ten pounds sterling or upwards, shall be allowed to be good; except the buyer shall accept part of the goods so sold, and actually receive the same, or, give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

Practically all the states in this country have adopted the Fourth Section substantially, as here given, but some of the states, as, for example, Illinois, have omitted the Seventeenth Section. There is an important difference in the wording of the statute in some of the states. The English statute, and that in most of the states, provides that no action shall be

brought in any case mentioned unless the contract is in writing, while in the other states it is provided that the contracts shall be void unless in writing. The distinction is at times an important one.

The provisions as to promises by executors and administrators only apply to promises by executors and administrators to personally pay the debts of the decedent, and does not apply to promises to pay expenses of administration, nor promises properly made in a representative, instead of a personal, capacity.

The provision as to promises to answer for the debt, default or miscarriage of another are held to apply only in cases where the promisor was to become secondarily liable. If the credit is given directly to the promisor, even although the benefit accrues to a third person, an oral promise is binding. The test is whether or not the person receiving the benefit himself remains liable for the debt. Agreements made in consideration of marriage, do not include actual promises of marriage. Promises to a person, if they will marry a certain person, have been held to fall within the scope of this statute.

The provisions of the Fourth Section relative to the sale of lands, tenements and hereditaments, are given a very broad meaning and apply not only to such transactions relating to freeholds, but also to those affecting smaller interests. In the statutes of many of the states, as well as in the original statute, all interests for less than a certain term (generally one or three years) are excepted from the operation of the statute.

The provisions as to agreements not to be per-

formed within one year, apply only to such performances as can by no possibility be performed within such time. If there is the slightest possibility that the contract may be completed within this period, the statute does not apply. For example, a promise to furnish a person with board for thirteen months, would fall within the statute, while a promise to furnish the same person with board for life would not fall within the statute, even although the expectancy of life of such a person might be a large number of years.

There is some ground for uncertainty as to just what class of property should be held to be included under the provisions of the Seventeenth Section. In general, a broad interpretation will be given and all species of personal property included.

Promissory notes, bonds, other choses in action, and corporate stock are generally held to be within the statute in the United States, but not in England. An acceptance and receipt of part of the goods takes the contract out of the statute.

The payment of earnest money also takes the transaction out of the operation of the statute. Such earnest money may be paid either at the time the contract was entered into, or afterwards.

Section 24. Operation of the Contract.

The general rule is that a contract can confer rights or impose liabilities upon a person who is a party to the contract. There are a few exceptions, however. Contracts made by agents furnish apparent, but not real, exceptions. If a person pur-

chases property with money belonging to another, there will be a resulting trust created in favor of the rightful owner of the money, and if a person conveys property to any person directing that he should hold the same for the benefit of a third person, the person to whom the property was transferred becomes a trustee for the benefit of such third person, even although he never agreed to the transfer nor to act as trustee.⁵

Again, "The bargain between the parties may be, that one of them shall confer a benefit on a third person. And, if the consideration for it is adequate, the consequence does not depend on the motive; as, whether it was to do a favor to the third person, or was an arrangement of convenience to the parties. Nor is it material in whose name the rules of practice require the action to be brought as, whether at law by one party against the other, or at law, by the third person against the party promising, or by a suit in equity. The third person has open to him the one of these three methods which the particular facts and the practice of the court may indicate."⁶

In the case of a joint contract, the promise is that of all the parties together, and if suit is brought, it must be brought against all of the parties of the contract who are living. A failure in this respect is fatal.

A joint and several contract is one which is the promise not only of the parties jointly, but also of each of the several parties individually. The party with whom such contract is made may sue all the

⁵ See Sections on Trusts.

⁶ Bishop on Contracts, 2d Ed.

parties or any one of them, but he cannot sue more than one and less than all.

Section 25. Assignment of Contracts.

The general rule is that any contract can be assigned except one which is entered into on account of special confidence in the skill or integrity of the other party. Thus, a contract to deliver one thousand bushels of wheat can be assigned, but a contract to paint a picture or defend a lawsuit can not.

Formerly the common law was very strict against allowing the assignment of a chose in action so as to permit the assignee to bring suit thereon.

This rule has been very greatly changed, but in some states it is still necessary for the assignee to bring suit in the name of the assignor.

Section 26. Interpretation and Construction of Contracts.

The terms "interpretation" and "construction" are often used interchangeably, but nevertheless there is a clearly defined distinction.

"Interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; that is, the sense which their author intended to convey, and of enabling others to derive from them the same idea which the author intended to convey. Construction, on the other hand, is the drawing of conclusions, respecting subjects that lie beyond the direct expressions of the text, from elements known from and given in the text; conclusions which are in the spirit, though not within the letter, of the text. Interpretation only

takes place if the text conveys some meaning or other.'"

The first and most important principle to be applied in the interpretation and construction of contracts is that the intention of the parties is to be carried out, and if this can be ascertained, it will govern, even although some changes have to be made in the meaning which would follow from a strict reading of the contract. This principle, however, must not be carried too far. The courts must interpret the contract according to what the parties have actually said, and can not make a new contract for them.

In construing a contract, the whole contract is to be construed together. Outside evidence may be admitted to explain a latent ambiguity in the contract, but not a patent ambiguity. In construing a contract, the presumption is in favor both of its validity and its legality, and in the case of two possible constructions, that will be adopted which will uphold the contract. In case of doubt, the words will be construed most strongly against the party using them.

In case of a contract which consists partly of written words and partly of printed words, the written words will prevail over the printed, as having probably been more carefully considered by the parties, and as more exactly indicating their intentions.

Section 27. Conditional Contracts.

A conditional contract is one which goes into effect or is terminated by the happening, or not hap-

¹ Lieber, *Hermeneties*, 11, 43, 44.

pening, of a certain event. Conditions in a contract are of three kinds:

- (1) Conditions precedent,
- (2) Conditions concurrent,
- (3) Conditions subsequent.

Conditions precedent are those which must be performed before the rights of the party who is to perform the conditions arise.

Conditions concurrent are those where a certain thing must be performed by each party to the contract simultaneously.

Conditions subsequent are those, the breach of which will terminate the liabilities under a contract of the person for whose benefit the condition subsequent was inserted, or terminate the rights of the other party to said contract.

Section 28. Certain Defenses to a Contract.

Among the special defenses to suits to compel the performance of a contract, or recover damages for its breach, are mistake, fraud, duress, and undue influence.

All of these defenses arise out of the underlying fundamental principles; that there can be no contract without "a meeting of the minds."

In the case of mistake, the minds of the parties have not met, and without any wrongdoing on either side, the agreement fails to represent what they agreed upon. In order for a mistake to constitute a valid defense, it must be mutual, or, there must be mistake on one side coupled with fraud on the other. Furthermore, the only kind of mistake which is a valid defense is a mistake of fact. Mistake of

law is never a defense, as everyone is supposed and bound to know the law.

There are three apparent exceptions to this rule; the following being considered as mistakes of fact rather than as mistakes of law: (1) Mistakes as to foreign law; (2) mistakes as to private statutes; (3) mistakes of fact which are in their turn occasioned by mistakes of law. Money paid under a mistake of law can not be recovered back. Money paid under a mistake of fact can be recovered back.

Mistake renders a contract void, while fraud, duress, and undue influence only render it voidable.

In order for fraud to be a defense, there must be present those elements required to sustain an action in tort for deceit.⁸

“Duress considered as a ground for avoiding a contract consists in any of the following acts committed or threatened by one of the parties, or with his connivance, and causing the other to enter into the contract: (1) Unlawful imprisonment of the other party; (2) imprisonment of the other party through the abuse of lawful process or made unjustly oppressive; (3) imprisonment of the husband or wife, parent or child or other near relative of the other party; (4) unlawful and great bodily harm to the other party or his near relative; (5) unlawful seizure, detention or destruction of the property of such person.”⁸

Undue influence arises wherever a person who stands in a fiduciary position or who is greatly trusted by the person with whom he contracts, uses such position of trust to unduly influence this person

⁸ Benjamin on Sales, Sec. 60.

for his own selfish interests. This defense can most generally be sustained where a person thus influenced is of weak intellect on account of age or other reasons.

Section 29. Discharge of Contracts.

A contract may be discharged in a number of ways:

(a) By its performance according to the terms of the contract. This is the simplest and clearest of all methods of discharge;

(b) By a new contract or agreement between the parties. This new arrangement may either take the form of mutual releases or the substitution of a new contract;

(c) If one party to a contract repudiates it, or renders it impossible for the other party to perform it, such second party is released from all liability therein. The same effect will result from the intentional alteration of a material portion of a written contract by one party to the contract;

(d) The death of either party to the contract will terminate all contracts of a special character. Contracts involving only property rights generally continue after the death of the party, and bind their estate;

(e) Certain contracts will be discharged by bankruptcy. For a discussion of this point, see Chapter on Bankruptcy;⁹

(f) If a judgment is obtained upon a contract, all the rights arising out of this contract will be merged in the judgment;

⁹ See Chapter XIV.

(g) By lapse of time. In every state there are statutes known as "Statutes of Limitations," which provide that no action shall be brought on any claim unless such action is brought within a certain time after the cause of action accrues. If a part payment of a debt is made, or a new promise to pay the debt is made, the statute will only begin to run from this time, even if the full period has already run and the debt had become what is known as outlawed. A new promise or partial payment will revive the debt. In most states, the statute of limitations does not run against infants or other persons under disability.

The Statutes of Limitations of the different states are as follows:

States and Territories—	Judgments, Years.	Notes, Years.	Open Accounts, Years.
Alabama	20	6	3
Arkansas	10	5	3
Arizona	5	4	3
California	5	4	2
Colorado	20	6	6
Connecticut	(o)	(e)	6
Delaware	10	6	3
District of Columbia.	12	3	3
Florida	20	5	2
Georgia	7	6	4
Idaho	6	5	4
Illinois	20	10	5
Indiana	20	10	6
Iowa	20(d)	10	5
Kansas	5	5	3
Kentucky	15	15	5(a)

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States and Territories—	Judgments, Years.	Notes, Years.	Open Accounts, Years.
Louisiana	10	5	3
Maine	20	6(e)	6§§
Maryland	12	3	3
Massachusetts	20	6	6
Michigan	10	6	6
Minnesota	10	6	6
Mississippi	7	6	3
Missouri	10	10	5
Montana	10(b)	8	5
Nebraska	5?	5	4
Nevada	6	4	4
New Hampshire	20	6	6
New Jersey	20	6	6
New Mexico	7	6	4
New York	20(n)	6	6§§
North Carolina	10	3*	3
North Dakota	10	6	6§§
Ohio	15(p)	15	6
Oklahoma	5(h)	5	3
Oregon	10	6	6
Pennsylvania	5(f)	6	6
Rhode Island	20	6	6
South Carolina	20	6	6
South Dakota	10(1)	6	6
Tennessee	10?	6	6
Texas	10	4	2
Utah	8	6	4
Vermont	8	6	6§§
Virginia	20	5*	2
Washington	6	6	3

States and Territories—	Judgments, Years.	Notes, Years.	Open Accounts, Years.
West Virginia.....	10	10	5
Wisconsin	20(n)	6	6
Wyoming	21	5	8

* Under seal, 10 years. † If made in state; if outside, 2 years. § Unless a different rate is expressly stipulated. || Under seal, 20 years. || Store accounts; other accounts, 3 years; accounts between merchants, 5 years. †† New York has by a recent law legalized any rate of interest on call loans of \$5,000 or upward, on collateral security. # Becomes dormant, but may be revived. §§ Six years from last item. (a) Accounts between merchants, 2 years. (c) Witnessed, 20 years. (d) Twenty years in Courts of Record; in Justice's Courts, 10 years. (e) Negotiable notes, 6 years; non-negotiable, 7 years. (f) Ceases to be a lien after that period. (h) On foreign judgments, 1 year. (i) Is a lien on real estate for only 10 years. (k) And indefinitely by having execution issue every 5 years. (l) Ten years foreign, twenty years domestic. (n) Not of record, 6 years. (o) No limit. (p) Foreign, domestic 6 years.

Section 30. Quasi Contracts.

A quasi contract is an obligation imposed by law for the purpose of doing justice between the parties. The term quasi contract is used because the obligation imposed is similar in its nature to an obligation arising from a contract and because these obligations are enforced by actions *ex contractu*. A quasi contract differs from an implied contract in that in the case of implied contracts the law presumes from the actions of the parties that they intended to contract, while it is evident in the case of quasi contracts that it is impossible for the parties to have contracted.

An illustration of quasi contracts is found in the cases where a person is under a moral and legal obligation to do an act and another does it for him under such circumstances of urgent necessity that admit

of no delay, the law will imply the promise to pay without the proof of the actual promise. Where a person has money in his possession rightfully belonging to another, an action may be had to recover such money without the proof of any promise to pay. When a person pays money for another at his request, he is entitled to reimbursement without proof of promise to reimburse.

Where goods are sold and delivered to another, without any express agreement as to the price to be paid for them, the law presumes a promise to pay what they are reasonably worth. This is, in reality, an implied contract, rather than a quasi contract.

Other illustration of quasi contracts are found in suits for use and occupation where there was no promise to pay rent, and in some cases where the tort is waived and the suit brought in *assumpsit*.

Section 31. Situs of Contracts.

By "situs" is meant location or situation. The situs of a contract is important, as it will determine the law which is to be used in the determination of questions affecting the contract. There is not necessarily a single situs for a contract; each of the different elements of the contract may have a different situs.

The place where the contract was entered into is called the "*locus celebrationis*," and all questions relative to the making of the contract, the capacity of the parties to the contract, the formal validity of the contract, etc., will be determined by the law of this place, or the "*lex celebrationis*."

The "*lex solutionis*" or the law of the place

where the contract is to be performed, will govern all matters relating to the performance of the contract, and similarly, the “*lex considerationis*,” or the law of the place where the consideration is to be paid, will govern all matter relative to the consideration. (It is to be noticed in this connection that the “performance” and the “consideration” are here interchangeable terms, the performance on the one side being the consideration for the performance on the other and vice versa.)

All questions pertaining to the remedy will be governed by the “*lex fori*” or law of the place where the suit is being tried. Finally, a contract will be interpreted in accordance with the law which the parties are presumed to have had in mind at the time of the making of the contract, presumably either the “*lex celebrationis*,” or the law of the domicile of the parties contracting.

CHAPTER III.

AGENCY.

Section 32. Principal and Agent.

One of the most important of the special branches of contracts is that of Agency. The relation of principal and agent arises whenever one person employs another to act for him in his place. The agent is more than the servant of the principal. He is his representative, and within the scope of his agency has the power to bind him. Any person may be a principal who is capable of contracting himself, and with very few exceptions, as, for example, in the case of an attorney at law or a public official, anything which a person can do himself, he may do through an agent.

Corporations may act as agents if the business to be transacted is within the scope of their charter, and on the other hand, practically all of the business of the Corporation must be carried on through agents. Agency is therefore of particular importance in the subject of Corporations.

Any person has legal capacity to act as an agent in any case where as a matter of fact it is possible for him to act. A person may thus do something as agent for another which he would be incapable of doing for himself, as, for instance, a minor may bind his principal by contract.

Section 33. The Dual Character of Agency.

Questions in agency may arise either between the principal and the agent, or between the principal and third parties. In other words, the question may be either whether the contract of agency was ever created, or, if it was created whether the agent has so exercised his authority as to bind the principal. In other words, we have to deal in this subject both with contracts between principal and agent and contracts which the latter makes in behalf of the former.

Contracts of the first class are merely ordinary contracts. The principles governing the agreement of a party to act as agent for another are the same as those governing his contract to sell him certain property.

Section 34. Classes of Agents.

Agents are classified into universal agents, general agents, and special agents.

A universal agent has power to represent and bind the principal in all cases whatsoever. Such agents are almost unknown at the present time.

A general agent is one who has general authority to represent the principal in transactions of a particular kind. A traveling salesman will serve as an illustration of a general agent.

A special agent is one appointed to represent the principal in some special transaction, or to do some particular act for the principal.

The following special classes of agents must be noted: brokers, factors, auctioneers and ship officers.

A broker is one who buys and sells property for another when the property is not in his possession.

Factors are similar to brokers, but have the property in their custody.

An Auctioneer is one who sells property at public sale to the highest bidder. He is held to be acting for both buyer and seller, and may sign a memorandum which will bind both under the provision of the Statute of Frauds.

Officers of ships have special powers to dispose of the ship or its cargo in order to secure needed funds when away from the home port. Since the introduction of the telegraph, this power has become less important and less frequently used.

An Attorney at Law is a special kind of an agent, especially licensed by law to represent to other parties before the courts of justice.

In the case of a partnership, each partner is an agent of the other partners and of the firm, and has power to bind both the firm and the other partners.

Section 35. Appointment of Agents.

An agent may be appointed expressly, either orally or in writing, or by implication. Most appointments are informal. To create the relationship, there must be the agreement, either express or implied, by both principal and agent. If one party has undertaken to act as agent for the other without his authority, the principal may become bound by ratifying the acts of the agent.

The principal may also become bound by estoppel when he permits the alleged agent to hold himself

out as his agent with his knowledge and without his objection.

Agency can never be proved as against the principal by the declaration of the agent; the agent, however, may testify in court to the agency, the same as any other witness.

In suits between principal and agent, the method of proof of the contract of agency does not differ from the method of proof of any other contract.

Section 36. Authority of the Agent.

A general agent has the power to bind the principal in all matters within the general scope of his agency.

A special agent has only the power to bind the principal in special transactions, and in the special manner prescribed by the terms of his appointment.

The power to sell real estate can only be given by a power of attorney under seal, which must describe the real property to be conveyed sufficiently to identify it with certainty. The authority to sell personal property may be given orally; if the power to sell designates a time or place of sale the agent is bound to observe this. An agent who has authority to sell has the implied authority to give receipts and to warrant goods, but has not the authority to give credit unless this was expressly given to him. The power to mortgage real property must generally be expressly given; it will not be implied either in a general power to manage the principal's business or from a power to sell. The authority to purchase property does not carry with it the power to buy on credit if the agent is supplied with funds.

The authority to bind the principal on commercial paper must be especially given.

Section 37. Execution of Contract.

The general principle is that the agent must execute the agency in accordance with the instructions given him by the principal.

An agent ordinarily cannot delegate his authority to a sub-agent. Exceptions to this rule are found in cases where the acts to be done by the sub-agent are mere ministerial acts, or where the agent himself is unable to do the act, as where an agent engages an attorney to defend a lawsuit.

When several persons are appointed as joint agents, they can only act jointly.

Section 38. Relations Between Principal and Agent.

The agent holds a fiduciary capacity towards the principal, and although he is only held liable for the exercise of a reasonable degree of skill and of care, he is held responsible for the highest possible degree of good faith.

It is the duty of the agent to keep accounts and to render an account for all money which he receives. The agent is entitled to reimbursement for his expenses and reasonable compensation for his services.

Section 39. Relation of Principal and Third Persons.

Where a contract is legally made by an agent for his principal with a third person, the respective rights and liabilities of the principal and third per-

son to each other are the same as if the principal and third person had contracted directly together.

The principal is liable wherever the agent has acted within the general scope of his agency, although the particular contract entered into was contrary to the instructions given to the agent, provided the person with whom the contract was made had no knowledge of such special instructions.

In the case of the termination of an agency, it is necessary for the principal, in order to protect himself, to give a general notice to the public of the termination of the agency, and to give special notice to all those persons with whom the agent has been accustomed to do business in his behalf.

Section 40. Relation of Agent and Third Person.

If an agent contracts with a third person in such a manner that he fails to bind the principal he himself is liable to the third party. In case the agent makes a contract in his own name but in reality for his principal, the third person on discovering the undisclosed principal may hold either the principal or agent.

Section 41. Termination of Agency.

The simplest method of terminating an agency is by its performance in accordance with the terms of the original contract. Where an agency was to continue for a certain definite time, it will terminate at the expiration of that time. If an agency was for some special purpose, it will be terminated as soon as its purpose is accomplished, or becomes impossible. If an agency is one for an indefinite period,

it may be terminated at any time by either party, unless such agency was coupled with an interest upon the part of the agent. In the case of an agency for a definite period either party has the power, although not the right, to terminate the agency at any time. In such a case, the injured party will have a right to an action for damages, but not to a bill for specific performance.

Either party may terminate the agency on account of misconduct or breach of the contract of the part of the other. The agency may also be terminated at any time by mutual agreement.

The death or insanity of either party will terminate the agency, except when coupled with an interest.

The bankruptcy of the principal will terminate the agency, but not necessarily that of the agent, although the latter may so impair the efficiency of the agent as to justify the principal in terminating the agency.

CHAPTER IV.

PARTNERSHIP.

Section 42. Definition.

Partnership is a legal relation existing between two or more persons arising from a contract either express or implied. A partnership is in fact a special form of agency. In all general partnerships, each member is the agent for the firm and for each member and has the power to bind the partnership and the members thereof.

A partnership may arise from the defective organization of a corporation, but unincorporated clubs and associations created for social, educational, religious, or other similar purposes and not for financial gain, are not partnerships.

In general, partnerships can only be created with the creation of mutual agencies, and one in whom this relation of mutual agency does not exist is not a partner.

Section 43. Property of Firm.

The firm capital is the amount which the partners by mutual agreement put in as the working capital of the business to be carried on by the firm. It is not necessary, however, that there be any firm capital. The business to be carried on may be one where no firm capital is absolutely required, as in

the case of a partnership between members of some profession, as doctors or lawyers, or a firm may borrow its capital, or conduct its business entirely on credit.

A distinction must be noted between firm capital and firm property. Firm property is a much broader term and includes not only the firm capital, but also any other property required in any way by the firm. Firm property may vary in amount from day to day with the gains and losses made by the firm, while the amount of the capital remains stationary unless changed by agreement between the parties. Upon a dissolution of a partnership, the partners will be tenants in common in the property left after the partnership debts have been paid. If a partner fails to contribute the full amount of capital agreed upon, he is chargeable with interest for the amount not contributed. If a partner contributes the use of certain property, and this property is destroyed, the loss falls upon him since the title is in him, but the loss of property actually turned over to the firm falls upon the firm.

Section 44. Shares in Profit and Loss.

In the absence of any agreement to the contrary, each partner will share equally in the profits and losses of the business. This is true even although they contributed unequal portions of the firm capital, as the services of one partner may counterbalance the additional property furnished by another. The partnership agreement generally regulates all matters relative to the amount of capital to be furnished by each, the services to be rendered by each, the share of

the losses to be sustained by each, the division of profits, and the drawing account, if any, of each partner.

The compensation of the partners in every respect is covered in the share of the profits and the drawing account, and in the absence of specific stipulations to the contrary, the capital furnished by each partner draws no interest, services draw no salary, the use of property contributed, in cases where the title to the property itself is reserved, draws no rent.

Section 45.—Nature of a Partner's Interest in Partnership Property.

The nature of a partner's interest in the property of a firm to which he belongs is an anomalous one. It is not an interest in any specified property, but merely an interest in the excess of the assets over the liabilities of the firm. As it cannot be determined in what particular property such surplus consists, the nature of a partner's interest while the partnership is doing business is an intangible one. Upon the dissolution of the firm, after the payment of the debts, each partner is entitled to his proportional share of the property remaining.

Section 46. Power of Partners.

As has been said before, each partner is the agent of the partnership and of the other partners. The extent of the authority of the partner in different transactions will depend partially upon the partnership agreement, but there are many powers which are generally recognized as existing in the case of all partnerships.

Section 47. Government of Partnership.

In general, a majority of the partners have the power to bind the firm. In case of an even division any proposition would fail of ratification. A person dealing with a firm may consider the consent of a majority to a contract as the consent of the firm, even although a minority dissent.

Section 48. Out-Going and In-Coming Partners.

No member of a partnership has the power to sell his interests to a third person, so as to make such third person as a new member of the firm. The reason for this principle is on account of the *delectus personarum*, or the right of every person to choose those persons with whom he will enter into a partnership relation.

With the consent of the other partners, a new partner can be substituted for an out-going partner and assume all his rights and liabilities.

If a partner retires from a firm without a new partner taking his interests, he is entitled to his share of the property owned by the firm at the time of his retirement, and is liable for his share of the debts existing at that time. He is also liable to third parties for debts of the partnership contracted after his withdrawal, unless he gives proper notice of his withdrawal.

The in-coming partner is not liable for the debts of the partnership existing prior to his entrance into the firm, unless he agreed to assume such liability in the contract by which he became a member of the firm.

Section 49. Limited Partnerships.

A limited partnership is one containing one or more general partners, and one or more special or limited partners. A limited partner is one who puts in a certain prescribed amount in the capital of the firm and is not personally liable beyond this amount. Limited partnerships are regulated by statute and all the provisions of the statutes must be carefully complied with, or all the partners will be liable as general partners.

Section 50. Termination of a Partnership.

A partnership is terminated by the termination of the time for which it was created; by the agreement of all the partners; or by the death, insanity, or bankruptcy of one or more of the partners.

In case of misconduct of one of the partners, a court of equity has the right to dissolve the partnership, and wind up its affairs, upon the petition of one or more of the other partners.

A partnership may also be dissolved by one party assigning his interest to another without the consent of the other partners. In case of the death, retirement, or bankruptcy of one of the partners, the remaining partners, known as the surviving partners, have the authority to close up the business of the partnership.

CHAPTER V.

SALES.

Section 51. Definition.

A sale is the complete transfer of the full property rights, that is, the title, in the personal property sold by the seller, and made in consideration of the price in money paid by the buyer. A sale must be carefully distinguished from a bailment,¹ a mortgage, and a consignment.

In none of these three transactions does the title pass. A sale must also be distinguished from a gift, where the property is transferred without consideration, and a barter where personal property is exchanged directly for other personal property, without the use of money in the transaction.²

Section 52. The Contract of Sale.

The executed contract of sale, divides with certain forms of bailments, the honor of being the oldest form of contract recognized by the Common law. The main principles of the law of sales are of Common law origin, many of them being very old, and have been little changed by modern legislation.

The requisites for a valid contract of sale are the same as in other forms of contracts. The same rules also apply as to the capacity of parties. There is the

¹ See Chapter VI.

² See Volume on "Currency, Banking and Exchange," Sec. 7.

same necessity for a consideration, but in contracts of sales the consideration must be money. The question of the legality of the contract of sale, and of the formal requisites have both been treated as fully as is necessary under the general heading of contracts.

Section 53. Subjects of Sale.

Any species of personal property, either corporeal or incorporeal, may be the subject of a sale. The objects of sales thus include corporeal movable property of every description, intangible property, such as the good will of a partnership, or a promissory note, and growing crops (*fructus industriales*). *Fructus naturales*, however, until severed from the soil are considered real property instead of personal.³

If an article which is the subject of a contract is not in existence, there can be no sale. If, however, the property has potential existence, as in the case of a year's produce from certain fields, there may be a sale.

Section 54. Passing the Title.

The question as to when the title passes in the case of a sale, depends primarily upon the intention of the parties. Where there is an executed sale, with no remaining debt due on either side, the title passes at once. If it is provided that the vendor shall make the delivery, the title passes upon such delivery. Where the sale is of a certain quantity or number of goods of a uniform standard, ordered by sample, the

³ *Fructus industriales* are such produce of the soil as are the result of annual plantings, while *fructus naturales* are the produce of trees or plants which live from year to year but produce annually.

title passes when the particular goods to be transferred to the vendee have been set apart.

If there is a sale of specific goods, but the vendor has something to do to put them in condition, title will not pass until such work has been performed.

Where goods are delivered to the buyer on approval, the title remains in the vendor until the buyer has signified his approval, but if the goods are sold and delivered to the vendee with an option to return them if it is not satisfactory, the title passes to the vendee. In this latter case there is a sale upon condition subsequent. The risk as to the property, which is the object of the sale, follows the title.

Section 55. Conditions, Warranties and Representations.

A conditional contract of sale is one which will become effective or will be defeated by the happening or not happening of a certain event. A condition is a part of the contract of sale. A condition precedent is one which must be fulfilled before the contract becomes binding. A condition subsequent is one the breach of which terminates the contract. In the case of the breach of a condition the remedy is an action for breach of the contract.

A representation is a statement made prior to the making of a contract as an inducement to the other party to enter into the said contract. A representation is not part of a contract. If the representation is false the remedy, if any, is an action in tort for deceit.

A warranty is a collateral agreement guaranteeing certain things to be so. If the warranty is false

the remedy is an action on the collateral contract of warranty instead of on the main contract itself.

Warranties may be either express or implied. The following are the principal implied warranties in the case of a contract of sale:

- (a) That the vendor has a good title,
- (b) That the goods are suitable for the purpose for which they are sold,
- (c) That in the case of the sale of provisions, the provisions are fit for use as food,
- (d) In cases where goods are sold by sample or description, that the goods correspond to such sample or description.

Section 56. The Doctrine of Caveat Emptor.

The doctrine of "caveat emptor" translated means, "Let the buyer beware;" in other words, the vendee is held responsible for knowledge of those facts which he should have been able to ascertain. The principal exceptions to this rule are in the cases covered by the implied warranties.

Section 57. Delivery and Acceptance.

There having been a sale, there must be a delivery of the goods sold. Delivery may be either actual or constructive. Constructive delivery takes place where the title is transferred without any change of location of the goods and the vendee is to take them away. Actual delivery is where the goods are actually delivered to the vendee or his agent. If the delivery is effected through a carrier, the delivery takes place upon delivery to the carrier if the carrier is the agent of the vendee, and upon delivery to the vendee, if the carrier is the agent of the vendor.

In case the goods are not personally selected by the vendee he has the right to examine them before acceptance. Acceptance of goods may be either express or implied. Implied acceptance is effected by the vendee exercising any act of ownership over the goods.

Where acceptance is made either through fraud, or mistake of fact, the vendee will generally be able to obtain relief.

Section 58. Rights of Vendor.

In the case of an executed contract of sale, the vendor can always sue for the contract price. If the vendee after the making of the contract refuses to accept the goods, the vendor can sue him for breach of contract. If the vendor is still in possession of the goods, he has a lien on the goods for the purchase price, and can sell the goods and sue the vendee for the difference between the contract price and the price for which the goods were sold to a third person. If the vendor after having shipped the goods learns of the insolvency of the vendee, he may exercise what is known as the right of "stoppage in transitu" and have the goods sent back to him.

Section 59. Remedies of Vendee.

After the title has passed, the vendee may bring an action in replevin to recover the goods if the vendor refuses to deliver them. If the vendor refuses to deliver the goods, the vendee may sue him for damages for breach of the contract. The measure of the damages will be the difference between the contract price and the price which the vendee is obliged to pay for similar goods from a third party.

If the goods are not such as can be purchased elsewhere conveniently the vendee may have a bill in equity for specific performance of the contract.

In case of false representation, the vendee has a right of action in tort for deceit.

In case of a breach of warranty, the vendee may bring an action "ex contractu" for breach of warranty.

CHAPTER VI.

BAILMENTS.

Section 60. Definition.

A Bailment is the delivery of goods for some purpose, upon a contract, express or implied, that after the purpose has been fulfilled they shall be redelivered to the bailor, or otherwise dealt with according to his directions, or kept till he reclaim them. A bailment differs from a sale as follows: In a sale there is a transfer of the title, with or without a transfer of possession, while in a bailment there is a transfer of possession without a change of title. A bailment necessarily involves the separation of the title and the right of possession, the bailor having the former, and the bailee the latter. As otherwise expressed, the bailor has the general property, in the thing bailed, and the bailee, the special property.

Section 61. Creation and Incidents of Bailment Relation.

A delivery, either actual or constructive, is necessary to create a bailment. A bailment without delivery is void as against subsequent bona fide purchasers, and generally as against creditors. In addition to the delivery there must be an acceptance by the bailee.

In the absence of statutory provisions to the con-

trary, any kind of personal property may be the subject matter of a bailment. Even incorporeal personal property may be the subject of a bailment, but not property not yet in existence.

Any person who has the power to contract, has the power to make a contract of bailment, and to become either a bailor (provided, of course, he has any property to serve as the subject matter of a bailment) or a bailee. The contract of bailment need not be an express one, the relation may be created by an implied contract.

If the subject of the bailment is injured or destroyed by a third person, either the bailor or the bailee has a right of action against such party.

Section 62. Classification of Bailments.

The modern common law classification of bailments is the three-fold classification set forth in *Coggs vs. Bernard*, as follows:

- (1) Bailments for the sole benefit of the bailor.
- (2) Bailments for the sole benefit of the bailee.
- (3) Bailments for mutual benefit.

In bailments of the first class the bailee is only required to use a slight degree of care, and is only liable for gross negligence.

In bailments of the second class the bailee is required to use the highest degree of care, and is liable for slight negligence.

In bailments of the third class the bailee is required to use ordinary care, and is liable for ordinary negligence.

An example of a bailment of the first class is found in the case where one party agrees to keep

some article for another, or to do some work thereon, without compensation.

Bailments for mutual benefit arise where an article is hired for use, or labor is hired to be used on an article.

Bailments for the sole benefit of the bailee are those where an article is loaned to be used by the bailee without compensation.

Section 63. Bailments Involving Special Liability.

Two species of bailments involve a special degree of liability; these are bailments to Common Carriers and to Inn Keepers, which will be treated in the two following sections.

Section 64. Inn-Keepers.

An inn-keeper is one who holds out that he will receive all travelers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received.

The business of an inn-keeper is considered as of a public character and is therefore subjected to special regulations.

There has been some dispute as to the correct statement of the common law rule as to the bailment liability of inn-keepers, but the correct statement probably is that, under the common law the inn-keeper is an insurer of the goods of his guest against all losses not due to the act of God, the public enemy, or the negligence of the guest himself or his servants.

The harshness of this rule has been somewhat abridged in modern times, and the inn-keeper is per-

mitted to protect himself against loss in various ways. In particular it is permissible for the innkeeper to provide a safe place for the keeping of valuables and to refuse to be responsible for the loss of goods (except those which the guest needs to keep about his person for immediate use) which are not delivered to him for safe-keeping.

This special bailment liability only attaches to the property of guests.

A guest is a transient person who resorts to, and is received at an inn for the purpose of obtaining the accommodations which it purports to afford. Persons not travelers may be guests at an inn or hotel. The essential point as to a guest is that he is a transient whose stay is more or less temporary and uncertain.

A person may become a guest at an inn before he has actually arrived there, provided his baggage has been taken to the inn and put under the control of its proprietor. A guest generally comes without any bargain, remains without one, and may go when he pleases, paying only for the actual entertainment received. Accordingly he ceases to be a guest when he pays his bill and departs, in the absence of any agreement to the contrary.

Section 65. Common Carriers.

A common carrier is one who engages regularly in the business of transporting for hire. The business of a common carrier is considered to be of a quasi public character, and is subject to special public regulations. Common carriers under the Com-

mon law are subjected to an especially high degree of bailment liability.

On account of the public nature of the business of common carriers they are obliged to receive all goods delivered to them for transportation destined for any place which the common carrier habitually makes delivery. Common carriers, however, cannot be obliged to receive goods beyond their facilities for transportation, nor can they be obliged to receive dangerous goods or goods improperly packed. It is the duty of a common carrier not to discriminate between their customers but to transport his goods in the order in which they are received. A common carrier, however, may give preference to perishable goods.

A common carrier is liable as an insurer for the safety of all goods entrusted to his care. The losses which a common carrier of goods is exempted from liability for are those occasioned by act of God, by public enemies, by the act of the shipper, or by the inherent nature of the goods themselves.

It is possible for common carriers to limit their bailment liability to a certain extent, either by general notice, or by special contract.

The extent to which liability may be limited by the first method is very slight. Although isolated cases may be found to the contrary, the better view unquestionably is that there is only one class of cases in which a carrier may limit its liability by a notice publicly posted but not shown to have been called to the attention of the particular shipper whom it is sought to affect, namely, where the carrier has posted a notice to the effect that the true

value of all articles shipped must be declared at the time the shipment is made, or else the carrier will be liable only for the apparent value of such articles.

The right of a common carrier to limit his liability by special contract is much broader. The only limitation upon such right is that the limitation shall not be illegal or unreasonable and that no unfair advantage be taken of the shipper. In the United States the courts have held, in the great majority of cases, that when a shipper accepts a bill of lading containing provisions for a limitation of the common law liability of the carrier, such provision is binding upon him as a part of his contract.

The special bailment liability of common carriers terminates as soon as the goods have reached their destination, and the consignee has been given sufficient opportunity to remove them. Thereafter the position of the common carrier is merely that of a warehouseman.

Common carriers have a lien on all goods transported by them and still in their possession for all charges due for transportation or storage. This right to a lien covers all charges for money advanced for the payment of custom duties, but does not cover demurrage charges.

Section 66. Carriers of Passengers.

Carriers of passengers are not strictly bailees, as there can be no bailment of a person. They are, however, bailees of the baggage of the passenger.

The degree of liability of carriers of passengers is far less than that of common carriers of goods. A carrier of passengers is only liable for injuries re-

ceived by the passenger when such injuries are occasioned by the negligence of the carrier. The liability of carriers of passengers for the baggage of passengers, however, is the same as that of common carriers.

Carriers of passengers may by notice limit their liability to goods actually required by passengers on their journey and to a certain specified value.

CHAPTER VII.

BILLS AND NOTES.

Section 67. Historical Development.

The law of Bills and Notes presents many striking contrasts to the law governing other species of contracts. The reason for this is to be found in the history of the development of this branch of the law. The general law of contracts in the Common law system was extremely indigenous to England. There is no part of the law which has been so little affected by foreign influences, there is no other branch of the law in which a more striking difference is to be observed between the two great systems of jurisprudence, the Common law and the Civil law. The law of Bills and Notes, on the other hand, is a foreign importation; it is a branch, and the most important branch, of the great "Lex Mercatoria" or Law Merchant, which was created by the joint effort of the merchants of the various European countries during the latter part of the Middle Ages, and which first reached a high degree of development in the Commercial cities of northern Italy.¹ When introduced into England, the principles of the Law Merchant were first enforced in the special Courts of the Merchants, and later in the Admiralty Courts, while the

¹For an account of the History of the Law Merchant see Street's *Foundation of Legal Liability*, Vol. II, p. 328 et seq., or Appendix to the first volume of Cranch's *Reports of the Supreme Court of the United States*.

regular Common Law Courts did not begin to take jurisdiction of such actions until the seventeenth century.

Bills and Notes are treated together on account of the general similarity of the law governing both classes of instruments. They are, however, distinct species of commercial paper, presenting many differences.

Section 68. Bills of Exchange.

A bill of exchange is an unconditional order in writing for the payment of a certain sum of money absolutely and at all events. Bills of exchange are of Italian origin and were introduced into England about the beginning of the thirteenth century. Bills of exchange are either inland or foreign. An inland bill of exchange is payable in the same state or country in which it is drawn. A foreign bill of exchange is one payable in some state or country other than that in which it is drawn.

There are three original parties to a bill of exchange: the drawer (who draws the order, or in other words, orders the payment of the money), the payee (in whose favor the order is drawn), and the drawee (on whom the order is drawn).

A bill of exchange must contain an absolute order to pay a definite sum of money. Although no particular words are required, there must be more than the conferring of authority to pay, or the asking of a favor.

Section 69. Promissory Notes.

A promissory note may be defined as follows:

“An open promise in writing by one person to pay another person therein named, or to his order or to bearer, a specified sum of money absolutely and at all events.”²

There are only two original parties to a promissory note, the maker (who makes the note and promises to pay the money) and the payee (in whose favor the note is made).

Section 70. Common Characteristics of Bills and Notes.

The most important common characteristics of both classes of negotiable instruments, already referred to, are the following:

- (1) Certainty of terms,
- (2) Necessity for payment in money,
- (3) Negotiability,
- (4) Presumption of Consideration,
- (5) Necessity for delivery,
- (6) Days of Grace.

These will be considered in turn in the six following sections.

Section 71. Certainty of Terms.

First of all there must be absolute certainty in all the terms of a bill or note. Any uncertainty will take away from the instrument those peculiar characteristics which attach to it as a bill or note. There must be certainty of amount, but the rule that “that is certain which is capable of being rendered certain,” applies here if the amount to be paid can be ascertained at the time the paper is delivered, from

² Danielson Negotiable Instruments, Sec. 28.

the face of the instrument itself without the assistance of any extrinsic aid. It is not sufficient if the amount to be paid can be ascertained by the time the payment becomes due.

Certainty as to time of payment is essential to a bill or note, and any contingency in this respect will render the instrument containing it non-negotiable. Exceptions to this last rule exist in conditions sanctioned by commercial usage as to demand, presentment, or sight, and contingencies when the payment depends on an event which is bound to ultimately happen.

Finally, and most important of all, there must be absolute certainty of the payment itself, or rather, absolute certainty that the payment will be due. A conditional order or promise to pay is not a bill or note.

Section 72. Payment in Money.

The special rules governing bills and notes are limited in their application to orders or promises to pay in money, and do not include orders or promises to deliver any other species of personal property. This rule has been changed by statutes in some states, but is reaffirmed in the Uniform Negotiable Instrument Act.

Section 73. Negotiability.

The most striking characteristic of both bills and notes at the present day is their negotiability. This quality, however, did not exist at first.

By negotiability is meant the ability of the owner

to assign his rights to another so that this second party becomes the owner of the chose in action and may bring suit thereon. Such a transaction is very contrary to the principles of the common law, which prohibited all assignments or transfers of choses in action on the ground that such assignments tended to encourage litigation, although the common law, on this subject, has been somewhat modified in recent years.

Even today, "while negotiability is the characteristic equity of bills and notes, it is not essential to their validity. Non-negotiable instruments may be declared upon as bills and notes, have been held to import a consideration, and are entitled to days of grace. By indorsing such an instrument the payee becomes liable to the indorsee, but the latter cannot independently of statute sue the maker or drawer."³

Section 74. Presumption of Consideration.

Closely connected with the subject of the negotiability of bills and notes, is that of the presumption of consideration for such instruments. Every bill or note is presumed to be given for a valuable consideration. Between the immediate parties the true state of facts may be shown, though even here the burden of proof is upon the party who denies that there was a consideration. The want of consideration can never be set up against a third person who has given a valuable consideration for a bill or note, and has taken such bill or note before maturity, and without knowledge, either actual or constructive, of the lack of consideration.

³ American and English Encyclopedia of Law, Vol. IV, p. 80.

Section 75. Necessity for Delivery.

The delivery of a bill or note is essential to its validity. No contract is made and no rights are created until delivery takes place.

Section 76. Days of Grace.

Days of grace are three additional days given to the party, primarily liable on a bill or note, in which to make payment. Originally, days of grace were only allowed to the drawee of a foreign bill. Later they were extended to practically all negotiable paper. Next a movement in the other direction began and days of grace have now been generally abolished. This matter is entirely regulated by statute. Days of grace are not allowed under the Uniform Negotiable Instrument Act.⁴

Section 77. Acceptance of Bills of Exchange.

The acceptance of a bill of exchange is an agreement, generally on the part of the drawee, but sometimes on the part of some other party, to pay the bill absolutely according to its tenor, or according to special terms contained in the contract of acceptance.

The holder of a bill of exchange (or draft, as it is often called) may refuse to accept a qualified acceptance.

The drawee of a bill of exchange may refuse to accept a bill, although he is indebted to the drawer, or has funds of the drawer's in his possession, or has promised to accept the bill. Even if he has received a valuable consideration for agreeing to accept the bill, he may refuse to do so, and the payee of the bill

⁴ See Section 87.

will have no right of action against him. In such a case, however, the drawer has a right of action against the drawee,—not on the bill, but for breach of the contract to accept.

Upon the acceptance of a bill of exchange the acceptor (i. e., the drawee) becomes primarily liable thereon, and the drawer thereafter is only secondarily liable, being in a similar position to that of an indorser. The acceptance of a bill admits everything essential to its validity.

An acceptance may be made either in writing or orally. If in writing, it is held that any form of words which do not in themselves negative the request of the bill should be treated as a valid acceptance. The following have been held to constitute a valid acceptance when written on the bill: “Seen;” “Presented;” “I will pay this bill;” or simply the name of the drawee. An acceptance may be made on a separate paper; but in such cases the acceptance must be clear and unequivocal.

An acceptance of a bill may be made before the instrument has been completed as a bill of exchange, or after the maturity of the bill, in which latter case it is construed as a promise to pay on demand. A bill may be accepted after the death of the drawer.

There may be an implied acceptance.

Ordinarily an acceptance can only be made by the drawee of a bill and the acceptance of the bill by another person is not permitted. An acceptance may be made by a duly authorized agent, for his principal. When several persons are named in the bill as drawees, either jointly or in the alternative, either may accept.

Where the drawee of a bill has refused or failed, for any reason, to accept a bill, any person who so desires may accept it "supra protest," or for honor. Such an acceptance is for the purpose of protecting the credit of some party to the bill. An acceptor supra protest upon paying the bill becomes entitled to recover the amount thereof from any party to the bill who would have been liable to the holder. This transaction furnishes an exception to the general rule that no person, by his own sole actions, can make himself the creditor of another party.

Section 78. Transfer of Negotiable Instruments.

A negotiable instrument may be transferred by any one of four general ways:

- (1) Assignment.
- (2) Operation of law.
- (3) Delivery.
- (4) Indorsement.

When a negotiable instrument is transferred by a separate writing, the transfer is by assignment, and the assignee can never take a better title than the assignor.

Title passes by operation of law from (a) a bankrupt holder to his assignee in bankruptcy; (b) from a deceased holder to his personal representatives; and (c) in some jurisdictions, from a married woman to her husband. Upon the death of a joint holder the title vests in the surviving holder or holders.

Title may be transferred simply by delivery, in the case of a bill or note payable to bearer.

Section 79. Indorsements.

An indorsement is simply the signature of any person (with or without additional words) written upon the back of a bill or note. An indorsement may be on the face of the paper, but such an indorsement is both rare and improper.

If the indorser has no interest in the bill or note, he becomes practically a guarantor, and is called an anomalous indorser. If the indorser is the holder of the paper, the effect of indorsement (followed by delivery) is to transfer the title, and (except in the case of an indorser without recourse) to guarantee the payment of the paper.

“The contract of indorsement is not an independent one, but a parasite which, like the chameleon, takes the hue of the thing with which it is connected. Attached to commercial paper, it becomes a commercial contract, operating as a contingent guaranty of payment, and a transfer of the title where the paper is negotiable; attached to any other chose in action, it becomes an equitable assignment of the beneficial interest without recourse to the assignor.”⁵

The contract of indorsement is also (generally) a double contract. It is both an executed contract transferring the title and an executory contract guaranteeing that the bill or note will be paid at maturity.

An indorsement in blank is one consisting simply of the signature of the indorser. The effect of such an indorsement is to render it payable to whoever may be its holder; it is equivalent to making the bill or note payable to bearer.

⁵ *Patterson vs. Paindexter*, 6 W. & S. 227.

An indorsement in full is one containing the name of the person to whom payment is to be made. Such a note can only be collected by the payee named or his endorsee, and can only be transferred by another indorsement.

The rightful holder of a bill or note indorsed in blank may himself change such indorsement into an indorsement in full.

An indorsement "without recourse" is made by adding these or similar words to the signature. By such an indorsement the indorser transfers the title, but does not guarantee the payment. Such an indorser, however, does guarantee the genuineness of the signatures to the paper, and is liable for all misrepresentations which he may have made.

An ordinary indorser is in general liable, in all cases for the payment of the bill or note, but his liability is a secondary one, and proper steps must be taken to charge him. It is only recently, however, that the principle that an indorser is to be held liable for the payment of a bill or note began to be enforced; it was not recognized under the Law Merchant.

Section 80. Presentment and Protest.

Presentment and protest are necessary to charge the parties secondarily liable on a bill or note. Two presentments are necessary in the case of a bill of exchange, the first for acceptance, and the second for payment. When a bill is payable on demand, or when the presentment for acceptance is delayed until the day of maturity, the two presentments are merged into one.

Only one presentment is required in the case of a promissory note—the presentment for payment.

The presentment must be made by the holder, or his authorized agent (who may be anybody) to the drawee or maker or his authorized agent. If the drawee or maker is a partnership, presentment may be made to a single partner, but if there are several drawees or makers who are not partners, the bill or note should be presented to all. If such parties are only jointly liable, and the first party to whom it is presented refuses to accept or pay, this may be treated as a dishonor.

The presentment should be at the place of business of the drawee or maker, or if he has no regular place of business, at his domicile. The presentment should be made during ordinary business hours. The time or place of presentment is only material where no answer is received. If an answer is actually received at any time or place, the presentment is good. The person making the presentment should have the bill or note with him to exhibit it, at least if requested to do so.

A person making a presentment for payment should exercise due diligence in any event, and he should endeavor not to time his presentment so as to make it impossible for the one to whom presentment is made to meet the payment, nor should he manage the presentment so as to take the maker or acceptor off his guard.

In case of the death of the maker or acceptor, the presentment should be to the personal representative of the deceased.

In case of presentment, for payment, and “dis-

honor"—i. e., refusal or failure to pay, it is necessary to give notice to all parties secondarily liable. Such notice may be either oral or in writing, but must be sufficient to inform the person to whom it is given that the acceptor or maker has failed to pay the bill or note, and that the holder of such paper looks to him for payment. Such notice must be given, or sent, within twenty-four hours after dishonor.

The failure to make proper presentment or to give proper notice releases the parties secondarily liable from liability, but does not affect the liability of those who are primarily liable for the payment of the bill or note.

Section 81. Protest.

“A foreign bill of exchange that has been dishonored must be regularly protested as a preliminary to the sending out of the notice of dishonor; therefore its presentment must be made by one who is a notary public, as the certificate of the protest of the notary is recognized as satisfactory proof of the statements that the certificate should properly contain, and the act of the notary in so acting is universally recognized. Where a foreign note has been indorsed, the protest of the note by a notary is necessary, according to the weight of authority. An inland bill or note, unindorsed, need not be protested by a notary, but the statutes, however, permit the notary public to protest the inland bill and note, after the same fashion as in writing up his certificate of protest on a foreign bill. It is a common custom, therefore, of banks and other handlers of nego-

tiable paper to employ a notary public as their agent to act in the particular of presenting negotiable paper and where it is dishonored of protesting and sending out the notice of dishonor to persons secondarily liable.

The employment of a notary in such a case, while sanctioned, is not made necessary; it is done as a matter of convenience. Nor is it necessary that the notice of dishonor be sent out by the notary, although this is customarily a part of the duties of his office by the private agreement of his employers. The notary's certificate contains his declaration in formal language, usually, and under a written copy of the note or bill in question stating that he has made presentment and demand of payment, and that the payment has been refused, together with the reason for the refusal, time, and the fact that he therefore protests the paper. The notary then attaches his seal of office to the certificate of protest and signs the same. The main purpose served by the certificate is to afford to the holder the legal testimony on the facts properly contained therein, in an action on the paper against those secondarily liable."⁶

Section 82. Excuses for Failure to Present, Give Notice or Protest.

Presentment, protest or notice, may be waived, but such waiver must be by the party who would be charged by such presentment, notice or protest, and not by the drawee, acceptor, or maker. War, riots, or anything which causes a complete cessation of busi-

⁶S. B. Neltner in Law Library, Vol. IX, p. 57.

ness may excuse presentment, notice, or protest. In such cases, these steps must be taken as soon as practical. The extreme illness, or the death of the holder on the eve of presentment will furnish a temporary excuse.

If an indorser indorses a void note, he is liable on his implied guaranty and cannot escape liability for lack of presentment, protest, and notice, as he cannot expect that the note will be honored under such circumstances. If the address of the maker of a note is unknown and cannot be found out by the exercise of due diligence, or the same is true as to the acceptor of a bill, presentment will be excused and the paper may be protested and notice sent out to the indorsers or the drawer.

Section 83. Defenses to Bills and Notes.

Defenses to bills and notes are divided into real defenses and personal defenses. Real defenses are such as grow out of some defect inherent in the instrument itself. Personal defenses are those which grow out of acts which between privy parties will invalidate the transfer or prevent the enforcement of the instrument, but which do not attach to or invalidate the instrument itself.

The most important real defenses are the fact that the party making it was incompetent to do so; that the bill or note is one declared void by statute; or that the instrument has been forged or materially altered.

Among the important personal defenses are fraud, duress, mistake, and failure of consideration. The principles governing such defenses in the

case of bills and notes are those governing these defenses in the case of other contracts. Another personal defense, is the payment of the instrument before maturity but without the surrender of such instrument.

Section 84. Bona Fide Holders for Value.

A bona fide holder for value of a bill or note is one who has purchased it for a valuable consideration before maturity without notice of any defenses thereto. The valuable consideration may not be equal to the amount called for by the bill or note but a very great discrepancy would have weight as showing lack of good faith on the part of the party purchasing said paper. The states are divided on the question whether or not a person who takes a note in payment for a pre-existing debt is a bona fide holder for value. The bona fide holder for value takes the paper free from all personal defenses, but subject to any real defenses which may exist. After negotiable paper has once passed into the hands of a bona fide holder for value it may be transferred free from liability from any personal defense to any person whatsoever (except of course, previous holders of the paper) even if such person had knowledge of the existing defenses or equities as they are sometimes called.

Section 85. Accommodation Paper.

Accommodation paper is negotiable paper which does not represent any real transaction or indebtedness between the parties but where one party signs as maker, endorser, or acceptor, for the purpose of

giving his credit to the party to the paper who desire to have it discounted. As regards third parties, the liability of all parties to accomodation paper is not single as in other classes of negotiable paper but as between the parties themselves the true state of affairs can always be shown. For a further discussion of accomodation paper, see the volume on Currency, Banking, and Exchange, section 62.

Section 86. Checks.

“A check is a draft or order on a bank or banker, purporting to be drawn on a deposit of funds, for the payment, at all events, of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand.”[†]

A check closely resembles an inland bill of exchange payable on demand and is governed by the same rules in relation to transfer, endorsement and negotiability. The payee of the check acquires no rights against the bank against which it is drawn. This is true, even although the bank has funds of the drawer of the check.

The rights of action for damages in such a case belongs to the drawer of the check.

The certification of a check entirely changes the relation of the parties. By certification, the bank becomes the debtor of the payee of the check to the amount of the check.

If a bank should fail after certification and before payment of the check, the loss falls upon the payee.

In general, the rules in force as to presentment,

[†] Norton on Bills and Notes.

notice and protest of checks are the same as in the case of bills of exchange and promissory notes. But there is in this connection, this distinction, between a check and a bill of exchange; the want of due presentment or notice of dishonor of a check does not discharge the drawer unless he has suffered some loss or injury thereby.

Section 87. The Uniform Negotiable Instrument Act.

The Uniform Negotiable Instrument Act is a uniform law, or rather code, covering the subject of negotiable instruments which has been adopted by the legislatures of a majority of the states of this country. In a few states, as for example Illinois, some slight changes have been made in the text of the Act. This Act was suggested and is in the main based upon the English Bills of Exchange Act, which was adopted in 1882.

The text of the American Uniform Negotiable Instrument Act is as follows:

UNIFORM NEGOTIABLE INSTRUMENT ACT.

Article I.—Form and Interpretation.

[Negotiable Instrument Must Conform to What Requirements.] § 1. An instrument payable in money, to be negotiated, must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.

2. Must contain an unconditional promise or order to pay a sum certain in money.

3. Must be payable on demand or at a fixed or determinable future time.

4. Must be payable to order or to bearer, and,

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

[Sum Payable Within the Act.] § 2. The sum payable is a sum certain within the meaning of this act, although it is to be paid:

1. With interest; or

2. By stated installments; or

3. By stated installments, with a provision that upon default in payment of any installment, or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

[Promise to Pay—Unconditional—What Constitutes.] § 3. An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

[Time Payable.] § 4. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

[Negotiability—Affected by Including Act Additional to Payment.] § 5. An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable under this act. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal or authorize the waiver of exemptions from execution.

[Validity and Negotiability, How Not Affected.] § 6. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

[Payable on Demand.] § 7. An instrument is payable on demand:

1. Where it is expressed to be payable on demand or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, or accepted or indorsed when over due, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

[Payable to Order.] § 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or some of several payees; or

6. The holder of an office for the time being.

7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

[Payable to Bearer.] § 9. The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last endorsement is an endorsement in blank.

[Need Not Follow Words of Statute.] § 10. The negotiable instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

[Date Deemed Date.] § 11. When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

[Antedated, or Post-Dated Instrument Takes Effect from Delivery.] § 12. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

[Undated—Any Holder May Insert Date.] § 13. When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the

instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course, but as to him, the date so inserted is to be regarded as the true date.

[Signed in Blank, May be Filled by Holder After Delivery.] § 14. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is issued or negotiated to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

[Incomplete Instrument Negotiated Without Authority, Void.] § 15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

[Delivery Required—When Presumed.] § 16.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

[Ambiguities and Omissions—Rules of Construction.] § 17. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the

date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either, at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

[Signature—Trade or Assumed Name.] § 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name.

[May be Signed by Agent.] § 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

[Descriptive Words Added to Signature—When Surplusage.] § 20. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of the principal, or in

a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability.

[Signature by Procuration—Notice of Limited Authority.] § 21. A signature by “procuration” operates as notice that the agent has but limited authority to sign, and the principal is bound in case the agent in so signing acted within the actual limits of his authority.

[Assignment by Infant or Corporation Passes Title.] § 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

[Forged Signature.] § 23. Where a signature is forged or made without authority it is wholly inoperative, and no right to retain the instrument or to give a discharge thereof, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Article II.—Consideration.

[Consideration Presumed.] § 24. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person

whose signature appears thereon to have become a party thereto for value.

[Consideration—Value—Pre-Existing Claim.]

§ 25. Value is any consideration sufficient to support a simple contract.

2. An antecedent or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction therefor or as security therefor and is deemed such, whether the instrument is payable on demand or at a future time.

[Holder for Value.] § 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

[Value Presumed to Extent of Lien.] § 27. Whether the holder has a lien on the instrument arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

[Absence or Failure of Consideration as Defense.] § 28. Absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

[Accommodation Paper—Liabilities.] § 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party, and in case a transfer

after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity.

Article III.—Negotiation.

[Negotiation—How Completed.] § 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof; if payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery.

[Indorsement, How Made—Not Negative by Additional Words.] § 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement, and the addition of words of assignment or of guaranty shall not negative the additional effect of the signature as an indorsement unless otherwise expressly stated.

[Indorsement Must be of Entire Instrument.] § 32. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

[Indorsement May be Blank, Special or Restrictive.] § 33. An indorsement may be either in

blank or special; and it may also be either restrictive or qualified, or conditional.

[Indorsement in Blank Payable to Bearer.]

§ 34. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

[Holder May Convert Blank Indorsement Into Special.] § 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

[Restrictive Indorsement, Elements of.] § 36. An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

[Rights Conferred by Restrictive Indorsement.]

§ 37. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument.

2. To bring any action thereon that the endorser could bring.

3. To transfer his rights as such indorsee, where

the form of the indorsement authorizes him to do so.

But all subsequent indorseees acquire only the title of the first indorsee under the restrictive indorsement specified in section 36—sub-section 1—and as against the principal or cestui que trust only the title of the first indorsee under the restrictive indorsements specified in section 36—sub-section 2 and 3 respectively.

[Qualified Indorsement Does Not Impair Negotiability.] § 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

[Conditional Indorsement Obligatory on Indorsee.] § 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make a payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

[Remote Special Indorser Protected.] § 40. Where an instrument originally payable to or indorsed specifically to bearer is subsequently indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

[When Payable to Several, All to Indorse.] § 41.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.

[Paper Drawn to Cashier Deemed Payable to His Bank.] § 42. Where an instrument is drawn or indorsed to a person, as "Cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

[Indorsement by Wrongly Designated Payee.] § 43. Where the name of the payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

[Indorsement in Representative Capacity May Negative Personal Liability.] § 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

[Presumption of Negotiation Before Maturity.] § 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

[Presumptive Identity of Place of Indorsement. With Date.] § 46. Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

[Negotiability Continues Till Discharge by In-

dorsement Payment or Otherwise.] § 47. An instrument negotiable in its origin continues to be negotiable until it has been respectively indorsed or discharged by payment or otherwise.

[Owner May Strike Out Any Indorsement—Subsequent Indorsers Released.] § 48. The owner may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

[Transfer Without Indorsement—Title Acquired.] § 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transferer vests in the transferee such title as the transferee had therein, and the transferee acquires, in addition, the right to enforce the instrument against one who signed for the accommodation of the transferer and the right to have the indorsement of the transferer if omitted by accident or mistake. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

[Prior Indorser May Acquire and Reissue Paper, But Can Not Enforce Against Intervening Indorsers.] § 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same, but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Article IV.—Rights of the Holder.

[Holder May Sue in Own Name.] § 51. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

[Holder in Due Course Defined.] § 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact.
3. That he took it in good faith and for value.
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

[Demand Paper Must Be Negotiated Within Reasonable Time to Confer Rights.] § 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

[Transferee Receiving Notice of Infirmity After Partial Payment Protected Only Pro Tanto.] § 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount therefore paid by him.

[Title Defective Through Obtaining Instrument or Signature Through Fraud or Duress.] § 55. The title of a person who negotiates an instrument is

defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

[Notice of Infirmary—What Constitutes.] § 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

[Rights of a Holder in Due Course.] § 57. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves and may enforce payment of the instrument for the full amount thereof against all parties liable thereon (except the defect and defense specified in section 10 of act entitled “An act to revise the law in relation to promissory notes, bonds, due bills and other instruments in writing,” approved March 18, 1874, in force July 1, 1874, and except the defect and defense specified in sections 131 and 136 of an act to revise the law in relation to criminal jurisprudence, approved March 27, 1874, in force July 1, 1874, known as sections 131 and 136 of Chapter 38 of the Revised Statutes of Illinois, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.)

[Rights of a Holder Deriving His Title Through Holder in Due Course.] § 58. In the hands of any

holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But the holder who derives his title through a holder in due course, and who is not himself a party to any fraud or duress or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to such holder.

[Presumption in Favor of Holder in Due Course—Shifting Burden—Exception.] § 59. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

Article V.—Liabilities of Parties.

[Engagements of Maker.] § 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

[Engagements of Drawer.] § 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the

amount thereof to the holder, or to any indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

[Engagements of Acceptor.] § 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

[Signing Otherwise Than as Maker, Drawer or Acceptor Deemed an Indorsement Unless Restricted.] § 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an endorser, unless he clearly indicated by appropriate words his intention to be bound in some other capacity.

[Liability of Indorser in Blank Before Delivering.] § 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the

payee, he is liable to all parties subsequent to the payee.

[Warranties Imported by Negotiation by Delivery or Qualified Indorsement.] § 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be.
2. That he has a good title to it.
3. That all prior parties had capacity to contract.
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

[Warranties of All Indorsers Except Accommodation Indorsers With Qualification.] § 66. Every indorser not an accommodating party who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two, three and four of the next preceding section; and
2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, every indorser engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on

dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

[Indorsement of Instrument Negotiable By Delivery.] § 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

[Indorsers Liable in Order of Indorsements—Joint and Several Liability.] § 68. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable.

[Liability of Broker or Agent Negotiating Instrument Without Indorsement.] § 69. Where a broker or other agent negotiated an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

[Measure of Damages on Protest of Bill Drawn or Indorsed Within This State and Payable Without the State.] § 69a. Whenever any bill of exchange drawn or indorsed within this state and payable without this state is duly protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable

in the United States in case suit has to be brought thereon and on bills payable without the United States with or without suit, 5% damages in addition.

Article VI.—Presentment for Payment.

[Presentment, When Necessary.] § 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument except in case of bank notes; but if the instrument is, by its terms, payable at a special place and he is able and willing to pay it there at maturity, such liability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

[Time of.] § 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

[Elements of Sufficiency.] § 72. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf.
2. At a reasonable hour on a business day.
3. At a proper place as herein defined.
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made

[Requirements as to Place.] § 73. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented.

2. Where no place of payment is specified and the address of the person to make the payment is given in the instrument and it is there presented.

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

4. In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

[Exhibition of Instrument and Delivery to Party Paying.] § 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

[Instrument Payable at Bank Must be Presented During Banking Hours—Exception.] § 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

[To Personal Representative of Deceased Maker or Indorser.] § 76. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be,

and if with exercise of reasonable diligence, he can be found.

[Presentment for Payment to Any One of Several Partners.] § 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

[Must be Made to All Persons Primarily Liable Who Are Not Partners.] § 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

[To Drawee for Payment Not Required to Charge Drawer Where it Would be Unavailing.] § 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

[Not Required to Charge Indorser Upon Paper Made for His Accommodation.] § 80. Presentment for payment is not required to charge an indorser where the instrument was made or accepted for his accommodation.

[Delay in Making, When Excused.] § 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

[When Dispensed With.] § 82. Presentment for payment is dispensed with:

1. When after the exercise of reasonable diligence presentment as required by this act cannot be made.

2. Where the drawee is a fictitious person.

3. By waiver of presentment, express or implied.

[Instrument Dishonored by Non-Payment When.] § 83. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

[Immediate Right of Recourse Against All Parties Secondarily Liable Accrues to Holder Upon Dishonor by Non-Payment.] § 84. Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

[Time of Payment—No Grace—Sundays and Holidays.] § 85. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable upon the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand day, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday.

[Computation of Time.] § 86. Where the instru-

ment is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

§ 87. Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

[What is Payment Made in Due Course.] § 88. Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

Article VII.—Notice of Dishonor.

[Notice of Dishonor Must be Given Drawer and Each Indorser.] § 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and each drawer or indorser to whom such notice is not given is discharged.

[On Whose Behalf Given.] § 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

[Notice May be Given by Agent.] § 91. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to

give notice, whether that party be his principal or not.

[Notice Given by Holder Inures for Benefit of All Prior Parties.] § 92. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

[Notice Inures for Benefit of Holder and All Parties Subsequent.] § 93. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

[Instrument Dishonored in Hands of Agent—Notice, How Given.] § 94. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

[Written Notice May be Supplemented by Verbal Communication.] § 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate unless the party to whom the notice is given is in fact misled thereby.

[Notice May be Written or Oral—Personally or Through Mail.] § 96. The notice may be in writing or merely oral and may be given in any terms which

sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

[Notice of Dishonor May be Given to Party or Agent.] § 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

[Service of Notice Upon Personal Representative of Deceased Party.] § 98. Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

[Notice to Any One of Several Partners Sufficient.] § 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

[Notice to Joint Parties Not Partners to be Given.] § 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

[Notice in Case of Bankrupt or Insolvent.] § 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.

[Time of Giving Notice of Dishonor.] § 102. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter

provided, must be given within the times fixed by this act.

[Times Required for Notice Where Persons Giving and Receiving Reside in Same Place.] § 103. Where the person giving and the person to receive notice reside in same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following.

[Times for Notice Where Persons Giving and Receiving Reside in Different Places.] § 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

[Notice Duly Mailed Deemed Due Notice Notwithstanding Miscarriage.] § 105. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due

notice, notwithstanding any miscarriage in the mails.

[Deposit in Letter Box Same as Postoffice.] § 106. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

[Party Receiving Notice Has Same Time for Notifying Antecedent Parties.] § 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after dishonor.

[Notice Sent, to What Address.] § 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

2. If he lives in one place, and has his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

[Notice May Be Waived.] § 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give

due notice, and the waiver may be express or implied.

[Waiver Embodied in Instrument Binding on All Parties.] § 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

[Waiver of Protest Waives Presentment and Notice of Dishonor.] § 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

[Notice of Dishonor, When Dispensed With.] § 112. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

[Delay in Giving Notice of Dishonor, When Excused.] § 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

[Notice of Dishonor, When Not Required to Drawer.] § 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person.
2. Where the drawee is a fictitious person or a person not having capacity to contract.

3. Where the drawer is a person to whom the instrument is presented for payment.

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

5. Where the drawer has countermanded payment.

[Notice of Dishonor, When Not Required to Indorser.] § 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument.

2. Where the indorser is the person to whom the instrument is presented for payment.

3. Where the instrument was made or accepted for his accommodation.

[Notice of Non-acceptance Annuls Necessity for Notice of Subsequent Non-payment.] § 116. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

[Omission of Notice for Non-acceptance Not to Prejudice Holder in Due Course Subsequently.] § 117. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

[Protest Required Only in Foreign Bills.] § 118. Where any negotiable instrument has been dishonored it may be protested for non-acceptance

or non-payment as the case may be; but protest is not required, except in the case of foreign bills of exchange.

Article VIII.—Discharge of Negotiable Instruments.

[How Discharged.] § 119. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

3. By the intentional cancellation thereof by the holder.

4. By any other act which will discharge a simple contract for the payment of money.

[How Secondary Liability Discharged.] § 120. A person secondarily liable on the instrument is discharged:

1. By an act which discharges the instrument.

2. By the intentional cancellation of his signature by the holder.

3. By the discharge of a prior party.

4. By a release of the principal debtor, unless the holder's right of recourse against the part (party) secondarily liable is expressly reserved, or unless the principal debtor be an accommodating party.

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the

holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

[Rights of Party Secondarily Liable, on Paying.] § 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

[Holder May Expressly Renounce His Rights Against Any Party to the Paper.] § 122. The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

[Unintentional Cancellation Inoperative—Burden of Proof.] § 123. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have

been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

[Material or Fraudulent Alteration of Instrument.] § 124. Where a negotiable instrument is fraudulently or materially altered by the holder without the assent of all the parties liable thereon, it is avoided except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

[What Are Material Alterations.] § 125. Any alteration which changes:

1. The date.
2. The sum payable, either for principal or interest.
3. The time or place of payment.
4. The number and the relations of the parties.
5. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

TITLE II.—BILLS OF EXCHANGE.

Article I.—Form and Interpretation.

[Bill of Exchange Defined.] § 126. A bill of exchange is an unconditional order in writing ad-

dressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer.

[No Assignment of Funds Until Acceptance.]

§ 127. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

[May Be Addressed to Several Drawees Jointly, But Not in the Alternative.] § 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

[Inland and Foreign Bills.] § 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

[May Be Treated at Option as a Bill or Note.]

§ 130. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note.

[Referee in Case of Need.] § 131. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such

person is called the referee in case of need. It is the option of the holder to resort to the referee in case of need, or not, as he may see fit.

Article II.—Acceptance.

[Acceptance Must be in Writing and Unconditional.] § 132. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

[Holder May Require Acceptance Written on Bill.] § 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused may treat the bill as dishonored.

[Effect of Acceptance on Separate Paper.] § 134. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person who, on the faith thereof, receives the bill for value.

[Effect of Promise in Writing to Accept a Bill.] § 135. An unconditional promise in writing to accept a bill before or after it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

[Twenty-four Hours Allowed for Decision as to Acceptance.] § 136. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as the day of presentment.

[When Bill May be Accepted.] § 137. A bill

may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment.

[Acceptance After Dishonor Reinstates Original Date.] § 138. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill payable accepted as of the date of the first presentment.

[General and Qualified Acceptance.] § 139. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

[Acceptance to Pay at Particular Place.] § 140. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only, and not elsewhere.

[Qualified Acceptance Characterized.] § 141. An acceptance is qualified which is:

1. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

2. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

3. Local; that is to say, an acceptance to pay only at a particular time.

4. Qualified as to time.

5. The acceptance of some one or more of the drawees, but not of all.

[Qualified Acceptance May be Refused—Effect if

Taken.] § 142. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

Article III.—Presentment for Acceptance.

[When Presentment Required.] § 143. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

[Must be Presented or Negotiated Within Reasonable Time.] § 144. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or

negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

[When, How and Upon Whom Presentment for Acceptance to be Made.] § 145. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

[When Presentment to be Made.] § 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

[When Delay is Excused.] § 147. Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay

caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

[When Presentment is Excused.] § 148. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some ground.

[When a Bill is Dishonored by Non-acceptance.] § 149. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When a presentment for acceptance is excused and the bill is not accepted.

[Dilatory Presentment Renders Bill Dishonored for Non-acceptance.] § 150. Where a bill is duly presented for acceptance and is not presented within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance, or he loses the right of recourse against the drawer and indorsers.

[Dishonor by Non-acceptance Renders Presentment for Payment Unnecessary.] § 151. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers

accrues to the holders, and no presentment for payment is necessary.

Article IV.—Protest.

[Protest of Foreign Bill.] § 152. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof, in case of dishonor, is unnecessary.

[Specifications of Protest.] § 153. The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

1. The time and place of presentment.
2. The fact that presentment was made and the manner thereof.
3. The cause of reason for protesting the bill.
4. The demand made and the answer given, if any, of the fact that the drawee or acceptor could not be found.

[By Whom Protest Made.] § 154. Protest may be made: by

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

[When Protest to be Made.] § 155. When a bill is protested, such protest must be made on the

day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

[Where Protest to be Made.] § 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary.

[Subsequent Protest for Non-Payment May be Made.] § 157. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

[Protest May be Had in Cases of Bankrupts or Insolvents.] § 158. When the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

[When Protest May be Dispensed With or Delay Excused.] § 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

[Protest on Copy of Lost Bill.] § 160. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Article V.—Acceptance for Honor.

[Acceptance by Third Party for Honor.] § 161. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.

[Acceptance for Honor Must be in Writing.] § 162. An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

[Deemed for Honor of Drawer When Not Expressed.] § 163. Where an acceptance for honor does not expressly state for whose honor it was made, it is deemed to be an acceptance for the honor of the drawer.

[To Whom Acceptor for Honor Liable.] § 164. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

[Engagements of Acceptor for Honor.] § 165. The acceptor for honor by such acceptance engages that he will, on due presentment, pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

[Acceptance for Honor Dates From Non-acceptance.] § 166. When a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

[Bill Accepted for Honor Must be Protested for Non-payment, etc.] § 167. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

[Presentment for Payment to Acceptor for Honor, How Made.] § 168. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 103.

[Delay in Making Presentment to Acceptor for Honor.] § 169. The provisions of section 81 apply

where there is delay in making presentment to the acceptor for honor or referee in case of need.

[Protest for Non-payment by Acceptor for Honor.] § 170. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

Article VI.—Payment for Honor.

[Any Person May Pay Supra Protest for Honor.] § 171. Where a bill has been accepted for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

[Must be Attested by Notarial Act of Honor.] § 172. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

[Payer Must Declare Intention, and for Whose Honor.] § 173. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

[Preference Among Persons Offering to Pay for Honor.] § 174. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

[Discharge of Parties Subsequent to Party for Whose Honor Paid.] § 175. Where a bill has been

paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

[Effect of Holder Refusing to Receive Payment Supra Protest.] § 176. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

[Payer for Honor Entitled to Receive Bill and Protest.] § 177. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Article VII.—Bills in a Set.

[The Whole of the Parts of a Bill Drawn in a Set Constitute One Bill.] § 178. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to other parts, the whole of the parts constitute one bill.

[Parts of Set Negotiated to Different Holders—True Owner.] § 179. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

[Holder Indorsing More Than One Part Liable on All Such.] § 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

[Acceptance on More Than One Part.] § 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

[Acceptor Liable on Outstanding Part Accepted by Him.] § 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

[Payment of One Part Discharges All.] § 183. Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

TITLE III.—PROMISSORY NOTES AND CHECKS.

Article I.

[What is a Negotiable Promissory Note.] § 184. A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another, signed by the maker, en-

gaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

[What is a Check.] § 185. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act are applicable to a bill of exchange payable on demand apply to a check.*

Note.—As per copy.

[Requisite Action on Checks, Presentment Notice, etc.] § 186. A check must be presented for payment within a reasonable time after its issue, and notice of dishonor given to the drawer as provided for in the case of bills of exchange, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

[Certification Equivalent to Acceptance.] § 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

[Certification Discharges All Drawers and Indorsers.] § 188. Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

[Check Does Not Operate as Assignment of Fund Until Acceptance.] § 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

TITLE IV.—GENERAL PROVISIONS.

Article I.

[Title of Act.] § 190. This act shall be known as the Negotiable Instrument Law.

[Meaning of Words Used in Act.] § 191. In this act, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

[Person Primarily Liable.] § 192. The person “primarily” liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are “secondarily” liable.

[Reasonable Time.] § 193. In determining what is a “reasonable time” or an “unreasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

[Time Prescribed—Sundays and Holidays, etc.] § 194. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

[Provisions of Act Not to Apply to Previously Given Instruments.] § 195. The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.

[Law Merchant to Govern Cases Not Provided in This Act.] § 196. In any case not provided for in this act, the rules of the law merchant shall govern.

CHAPTER VIII.

GUARANTY AND SURETYSHIP.

Section 88. Definitions and Distinctions.

The contracts of guaranty and suretyship are each a branch of the same general species of contracts. Both the guarantor and the surety by their contract make themselves secondarily liable for the payment of the debt for which another is primarily liable. The most numerous instances of the contract of guarantor and surety are to be found in the cases of promissory notes and bonds.

In spite of the similarity between the contract of the guarantor and the surety, some marked distinctions are to be found between them.

A surety, as a general rule, is a party to the original contract of the principal, he signs his name to the original agreement at the same time the principal signs, and the consideration for the principal's contract is the consideration for the agreement of the surety's. The surety is therefore bound on his contract from the very beginning, and he is bound also to inform himself of the defaults of the principal debtor, and he is not in any part relieved from his obligations under the contract by the creditor's failure to inform him of the principal's default in the contract, for which contract the surety has become the security for. A guarantor, on the other hand,

usually does not make his agreement to answer for the principal's debt or default, contemporaneously with the principal or by the same agreement, but his obligation is entered into subsequently to the making of the original agreement, and his agreement is not the contract that the principal makes, and hence a new consideration is required to support it. The contract of the principal's not being the one the guarantor makes, he is not bound to inform himself of default, or failure of principal to perform his contract.

The creditor is also under the obligation to inform the guarantor of the principal's default, not strictly in the sense of being obliged to give notice immediately after demand on the day the obligation matures, as in the case of an indorser, but if a failure to give notice materially prejudices the rights of the guarantor, the guarantor can claim a discharge on the obligation to the extent of the injury suffered. The contract of the guarantor is not only collateral, but it is secondary; the surety's contract is primary and direct.

The guarantor is liable only after the default of the principal; the liability is established by the default of the principal, and by showing performance of the conditions of the contract.¹

Section 89. Who May Become Surety or a Guarantor.

In general, any person who is capable of contracting, may bind himself as a guarantor or a surety. Some exceptions, however, are to be noted. A cor-

¹ S. B. Neltner in Law Library.

poration cannot become surety unless this power is given them in their charter; by statute in some states an attorney at law is prohibited from acting as surety; in many of the states, which have given married women the right to contract in other respects, the right to make contracts of suretyship is still denied to them. It is often provided in partnership agreements that neither partner shall become a surety or a guarantor without the consent of all the other partners. The disabilities to contracting in general, such as infancy, insanity, etc., apply in case of guaranty and suretyship.

Section 90. Making the Contract.

The contracts of guaranty and suretyship require a consideration the same as other contracts, but it is not necessary that the consideration should be in any sense a benefit to the surety or guarantor. The detriment to the party to whom the promise is made is a sufficient consideration to bind the guarantor and surety.

Section 91. Liability of Guarantor and Surety.

The liability of the guarantor and the surety has already been discussed to some extent in section 88. As a general rule, the liability of neither can be extended by implication beyond the precise terms of the contract. Delivery also is essential, to make the guarantor or surety liable either on a note or bond. The contract of the surety is an original one. If the surety binds himself to the same extent as the principal he may be sued before the principal or the principal may disregard it and the surety only be sued. A surety, however, is not liable beyond

the penalty of his bond. If a surety signs the instrument before it has been completely filled out, and it is afterward filled out and delivered, he is liable thereon, even although the blanks were filled in in a different manner from that agreed upon between the principal and the surety.

If a surety signs in such a manner as to appear as a principal he is bound as a principal, although it was the intention that he should be merely a surety.

As between the immediate parties to any bill or note, any defense can be set up which would invalidate any ordinary contract. This rule does not apply in the case of remote parties.

The holder of a bill or note, to take it free from defenses, must have given something of value for it. This rule does not apply, however, when the principal is released by operation of law. A surety will be released by any material alteration of the contract between the principal and the creditor. For example, an extension of time given by the creditor to the principal, without the surety's knowledge and consent, is a frequent ground for claiming a discharge, both because of the alteration of the contract and because the risk of the surety is thereby increased. But the law requires the extension agreement to be founded on a proper consideration, in order that it work a release. And the granting of additional time could not be held to discharge the surety where the surety has been fully indemnified against loss by the principal's putting him in possession of property sufficient to pay the debt. The holder of a guaranteed note does not discharge the guarantor by taking collateral security of the maker

without extending the time. Taking additional security does not weaken the original contract, nor take from the surety any advantage, it could only be a benefit.

A surety is not bound who was induced to become a surety through the fraud of the creditor.

Section 92. Liability of Guarantor.

The contract of the guarantor differs from that of a surety in that it is a secondary instead of a primary contract. In other words, where the surety makes a contract of its own with the creditor the guarantor only guarantees the contract of the principal. Guarantees may be either special or general. A special guarantee is one limited to the guaranty of the obligation of another to some particular person, while a general guarantee is one not so limited.

Guarantee may be also either absolute or conditional. In case of a conditional guarantee, the guarantor is entitled to notice of default, but not in the case of an absolute guarantee.

The rights of the guarantor having been fixed, he is liable to the extent provided for by his contract.

Section 93. Rights and Remedies of Surety and Guarantor.

If a surety or guarantor pay the debt which is primarily the debt of the principal, they have what is known as the rights of exoneration and subrogation. By exoneration is meant the right to be exonerated or reimbursed by the party primarily liable. It is a simple right of action against the principal for the money paid. Subrogation is the right to be sub-

rogated to or put into place of the creditor towards the principal debtor. In other words, by subrogation the surety or guarantor who has paid the debt becomes entitled to sue the principal debtor and in addition is entitled to the benefit of all the securities which the principal debtor has given to the creditor. When the creditor has surrendered to the principal, without the consent of the surety, any securities given to him by the principal debtor, the surety is entitled to a set-off if he is sued by the debtor. If there are several sureties, and one surety pays the full amount, he is entitled to contribution from the other sureties, that is, he can compel each of the sureties to pay his proportionate share of the amount for which they were all liable.

Section 94. Bonds and Bail.

A bond is an instrument in writing and under seal, binding the obligers to the obligee, in accordance with the recitals of the terms of the contract, and containing a defeasance clause showing the limitations or conditions of the liability of the sureties.

A bond is sometimes signed both by the principal and surety and sometimes only by the surety. Bonds are of many kinds, but the principles governing them are in the main the same.

The most important class of bonds are those for the fulfilment of legal obligations of any character; bonds given in legal proceedings; bonds of public officials and bail bonds.

A bail bond is one given to secure the appearance of the person who is released from custody by the filing of said bail bond at a designated time. The

surety is released from obligation in said case if the party for whom the bond was given appears for trial at the proper time and the surety may also release himself by surrendering the party, for whom he went bail, once more into custody.

CHAPTER IX.

INSURANCE.

Section 95. Nature of the Contract.

One most striking peculiarity is to be noticed, at the outset, in the discussion of the contract of insurance—which is, that the real character of this class of contracts is the exact opposite of their apparent character. While the purpose of insurance is, to as far as possible, eliminate the uncertainties of accidental loss by the division of such loss among a large number of those exposed to the danger of such loss, the contract is on its face a wagering contract. The explanation of this apparent inconsistency lies in the fact that the party insured, in effect, wagers he will suffer a certain loss (paying a small sum in all events upon the consideration that he is to receive a large sum if the loss occurs), and this when the loss insured against happens, the winning of the wager, i. e., the payment of the insurance, balances (or partially balances) the loss sustained. This wager character of an insurance policy is partially hidden in the case of a life insurance policy by the presence of the investment element in the contract, but the wager element is present just as certainly in the case of life insurance as in any other kind of insurance. In life insurance, however, the loss insured against is certain to happen, and the element

of uncertainty arises from the doubt as to the date at which such loss will occur.

Section 96. The Insurable Interest.

Formerly any person could take out a policy of insurance upon any risk. A person could insure the life or the property of a person who was a complete stranger to him and in whose life or property he had no possible interest. Such an insurance policy was a clear wagering contract, both in form and in effect. When wagering contracts, in general, were declared by statute illegal, this class of insurance contracts fell under the ban, and it is now necessary for the insured to have some interest in the life or property insured. In the case of a life insurance contract, this interest must have existed at the time the contract was entered into, but need not, necessarily, exist at the time of the death of the party on whose life the policy was taken out. In the case of fire, or marine insurance, on the other hand, the insurable interest need not exist at the time of contracting, but must exist at the time of loss. In insurance contracts of all classes the amount of insurance must not exceed the insurable interest. Any person, however, may insure his own life for any amount he sees fit.

Section 97. The Contract of Insurance.

The contract of insurance presents few peculiarities. The ordinary rules governing the making of contracts, the necessity of a consideration, etc., apply to contracts of insurance. Such contracts do not fall within the provisions of the Statute of

Frauds and need not be in writing, although, as a matter of fact, such contracts invariably are.

Section 98. Warranties and Representations.

The subject of warranties and representations are of particular importance in the field of insurance. The falsity either of statements contained in a warranty or a representation may be sufficient to avoid the contract. A difference between the two, however, is to be noticed in the fact that the putting of a statement in the form of a warranty is conclusive evidence that the parties consider it as material, while a representation may or may not be material.

Not only may a contract of insurance be avoided when the matter contained in a warranty or a representation is false, but also when future promises contained therein are violated.

“Statutes providing that a warranty, misrepresentation, or untrue statement in a contract of insurance shall not be a ground for the avoidance of the policy unless the warranty, misrepresentation, or untrue statement relates to some matter material to the risk have been applied and their validity tacitly assumed in numerous reported cases. See 16 Am. & Eng. Encyc. of Law (2nd ed.) 921 et seq. Some presumption of validity, of course, arises from the above-mentioned decisions applying the statutes as valid enactments, but in a number of cases the validity of such statutes has been directly passed upon. By these decisions the acts have been uniformly sustained.

The purpose of such statutes is to prevent the defeat of a policy by a mere stringency of stipula-

tion, since by the aid of such warranties, and the innocent mistakes of the insured, it has often happened that the insurer has been able to escape liability on a ground having no real merit and of the purest technicality. Such statutes are remedial in their nature, and are quite within the police power of the legislature. *Penn. Mut. L. Ins. Co. vs. Mechanics' Sav. Bank etc. Co.* 72 Fed. Rep. 413, 19 C. C. A. 286, 37 U. S. App. 692; *Schuermann vs. Union Cent. L. Ins. Co.* 165 Mo. 641, 65 S. W. Rep. 723; *Continental F. Ins. Co. vs. Whitaker*, 112 Tenn. 151, 79 S. W. Rep. 119. See also *White vs. Connecticut Mut. L. Ins. Co.* 4 Dill (U. S.) 177, 29 Fed. Cas. No. 17,545; *Queen Ins. Co. vs. Leslie*, 47 Ohio St. 409, 24 N. E. Rep. 1072. And see the reported case.

The validity of statutes of the nature under discussion may also be sustained on the ground that a state has a right to prescribe the terms and conditions upon which it grants corporations, whether foreign or domestic, the privilege of doing business within its borders. *John Hancock Mut. L. Ins. Co. vs. Warren*, 181 U. S. 73, 21 U. S. Sup. Ct. Rep. 535, 45 U. S. (L. ed.) 755, wherein the court said: 'It was for the legislature of Ohio to define the public policy of that state in respect of life insurance, and to impose such conditions on the transaction of business by life insurance companies within the state as was deemed best. We do not perceive any arbitrary classification or unlawful discrimination in this legislation, but at all events we cannot say that the Federal Constitution has been violated in the exercise in this regard by the state of its undoubted power of corporations.'

Such a statute is not invalid as being class legislation, since if an act falls under the police power the legislature must judge of the objects upon which the statute shall operate. The court cannot declare it void on the ground that there are, in its opinion, other objects equally deserving of the attention of the legislature, which it has omitted to notice. *Continental F. Ins. Co. vs. Whitaker*, 112 Tenn. 159, 79 S. W. Rep. 119.

It has been held that the Missouri statute considered in the reported case is not within the prohibition of section 53, article 4, of the Constitution of that state, the court saying: 'It is not a special law regulating the practice or jurisdiction or a change of the rules of evidence in any judicial proceedings before courts or other tribunals.' *Jenkins vs. Covenant Mut. L. Ins. Co.* 171 Mo. 375, 71 S. W. Rep. 688.

In *John Hancock Mut. L. Ins. Co. vs. Warren*, 181 U. S. 73, 21 U. S. Sup. Ct. Rep. 535, 45 U. S. (L. ed.) 755, the court sustained the Ohio statute (Rev. Stat., sec. 3625), which provides that 'no answer to any interrogatory made by an applicant, in his or her application for a policy, shall bar the right to recover upon any policy issued upon such application, or be used in evidence upon any trial to recover upon such policy, unless it be clearly proved that such answer is wilfully false and was fraudulently made; that it is material, and induced the company to issue the policy, and that but for such answer the policy would not have been issued; and, moreover, that the agent of the company had no knowledge of the falsity or fraud of such answer.'

In *Penn. Mut. L. Ins. Co. vs. Mechanics' Sav. Bank etc. Co.* 72 Fed. Rep. 413, 19 C. C. A. 286, 37 U. S. App. 692, the court upheld the Pennsylvania statute, the provisions of which are as follows: 'Whenever the application for a policy of life insurance contains a warranty of the truth of the answers therein contained, no misrepresentation or untrue statement in such application, made in good faith by the applicant, shall effect a forfeiture or be a ground of defense in any suit brought upon any policy of insurance issued upon the faith of such application, unless such misrepresentation or untrue statement relate to some matter material to the risk.'

And in *Continental F. Ins. Co. vs. Whitaker*, 112 Tenn. 151, 79 S. W. Rep. 119, the court declared valid the Tennessee statute providing that 'no written or oral misrepresentation of warranty therein made in the negotiation of a contract or policy of insurance, or in the application therefor by the assured, or in his behalf, shall be deemed material or defeat or void the policy or prevent its attaching, unless such misrepresentation is made with actual intent to deceive, or unless the matter represented increased the risk of loss.' ''¹

¹ *Northwestern National Life Insurance Co. vs. Riggs* in 7 Amer. and Eng. Anno. Cases.

CHAPTER X.

TORTS.

Section 99. Definition.

It was shown in the introductory chapter that every wrong is the violation of some right, and also that rights are of two general species: those general rights which every member of a society has against all other members, and those special rights which a person acquires as against some other particular person or persons, by agreement or contract with such person or persons. A violation of the first species of rights is a tort, while a violation of the second species of rights is a breach of contract. This book up to this time has been taken up with a discussion of contracts and its various branches. In general, the subject of torts does not enter into a study of commercial law. There are, however, a few classes of this species of wrong which need such consideration in this connection. The torts which will be here discussed are those of deceit, trespass to personal property, conspiracy, and infringements of patents, copyrights, and trademarks.

Section 100. Deceit.

Deceit is the most important of all torts from the standpoint of commercial law. An action for this tort will lie whenever one person, by fraud, induces

another person to alter his condition in some respect (generally through making a contract) to his damage.

There are five necessary requisites in an action for deceit. A failure to prove any one of the following five elements will be fatal to the plaintiff's cause in an action of this character:

(1) There must be a misrepresentation of material fact:

(2) The defendant (in the action for deceit) must have known the statements made to be false:

(3) The plaintiff (in the action for deceit) must not have known the statements to be false, but must have believed them to be true:

(4) The defendant must have made the statements with the intention of having them acted upon: and

(5) The plaintiff must have actually acted upon the statements made by the defendant, and as a result been damaged thereby.

There must always be a misrepresentation of material fact as the first element in an action for deceit. This misrepresentation, however, need not always consist of express words. There may be a misrepresentation either (a) by express words, (b) by actions, or (c) by concealment.

In an action for deceit the necessity for proving the knowledge of the falsity of the statement by the defendant can be fulfilled by showing either:

(a) That the defendant actually knew the statement to be false;

(b) That he made the statement recklessly,

without taking pains to ascertain whether it was true or false;

(c) That he made the statement positively, when in fact it was only a matter of opinion; or

(d) That the defendant stood in such a relation to the subject-matter that it was his duty to know the truth concerning the matter.

It is sufficient that the representations were either made especially to the plaintiff; or to a class of persons in which class the plaintiff was included; or generally to the public with the intention of inducing anyone who would to act upon them.

The law of contracts and torts come very closely together at the subject of deceit. Deceit, as above stated, is generally used to induce a person to enter into some contract, and in such cases the injured party generally has a choice of remedies; he can either sue in tort for the deceit, or waive the tort and sue in contract for the breach of the contract arising from the failure of the representations to be true.

Section 101. Trespass to Personal Property.

An action for trespass to personal property, formerly, only lay in cases where the property was destroyed, or where it was taken from the possession of the owner, **trespass de bonus asportatis**. Later the action was allowed in cases of damages to personal property.

The most important class of trespasses to personal property are those resulting from the deprivation of the owner of his possession. Such trespasses are now known as conversions.

Every act of control over personal property,

without the owner's authority, and in violation of his rights, is a conversion. Sawing trees belonging to another into logs is a conversion, as is also making wheat into flour, or the adulteration of liquor by a carrier. It is a conversion to collect a bill or note belonging to another without the authority of the owner, or to sue a note to judgment, without such consent. The cancellation of a certificate of membership in a Board of Trade, or the wrongful cancellation of stock, amounts to a conversion.

Not every tortious act, however, which affects personal property is a conversion. Damaging personal property, or even interference with the owner's use of the property, without depriving him of its possession does not amount to a conversion. Wrongful use of the chattel of another is not a conversion where there is no denial of the owner's title. Assertion of ownership unaccompanied by any act of ownership will not amount to a conversion. To constitute conversion there must be either an actual conversion of the property to the use of the defendant, or a constructive conversion by failure to deliver up the property on demand. As a general rule, the question of intention is immaterial in determining whether or not there has been a conversion.

Section 102. Conspiracy.

Conspiracy consists in the joining together of two or more persons to do any unlawful act to the injury of some third person. The exact boundaries of the scope of this action has never been clearly defined; the scope of the civil action is somewhat wider than that of the civil action of the same name, and the

scope of each has been much widened in recent years. There must be, however, in all cases both an unlawful act and an injury. An agreement between two or more persons, to injure the business of a third person, of whom they were either competitors or enemies, is a conspiracy.

Section 103. Infringement of Patents, Copyrights or Trademarks.

A species of tort of much importance in the field of commercial law is that arising from the infringement of patents, copyrights, or trademarks.

A patent is a license granted by the government to an inventor, giving him for a certain period, the exclusive right to the use of his invention.

A copyright is "the exclusive privilege, secured according to certain legal forms, of printing, or otherwise multiplying, publishing, and vending copies of certain literary or artistic productions."

Both patents and copyrights are entirely statutory in their origin and are entirely governed by the provisions of the Federal Statutes.

The rights possessed by holders of either patents or copyrights is a species of personal property and is protected by the law to the same extent as any other species of property. In case of the infringement of a patent or a copyright, the owner of such patent or copyright may either sue in tort for the damages occasioned by the infringement, or obtain an injunction against the infringing party. A court of equity has the power to grant both an injunction and damages in the same suit.

A trademark is any emblem, word, or sign

adopted by any person as a designating mark for his business or products. Trademarks are of common law instead of statutory origin, although it is provided, by the Federal Statutes, that, trademarks used in interstate commerce may be registered with the national government.

No trademark is valid which is descriptive of the article with which it is employed, the reason for this being that any person making or selling an article has an equal right to the use of all words or pictures descriptive of the same. Geographical names are good as trademarks, except as against persons in the same place, and personal names are good as trademarks, except as against persons of the same name; and even in the cases of the exceptions just noted a person may be enjoined from using his own name or the name of the place where he is engaged in business, if he is using such a trademark for purposes of fraud.

CHAPTER XI.

CRIMINAL LAW.

Section 104. Introductory.

Crimes like torts have only a secondary place in the study of commercial law, but a few crimes require some brief mention in this connection. It must be remembered that a tort and a crime may both arise from the same act, the tort being the wrong to the individual and the crime the wrong to the public.

Section 105. Larceny and Embezzlement.

Larceny is the felonious taking and carrying away of the personal goods of another.

Embezzlement consists in the converting to one's own use of property lawfully in one's possession, but the property of another.

If the property of a master is taken by a servant, the crime is larceny; if the property of a principal is taken by an agent, the crime is embezzlement. In some states all distinction between larceny and embezzlement has been abolished by statute.

Any species of personal property may be the subject either of larceny or embezzlement. A person, however, at common law, cannot be held guilty of embezzlement for taking the whole of certain property of which an undivided portion (no matter how small) belongs to him. Thus, if a collector takes a bill to collect for ten per cent commission and after collecting the bill keeps the whole of it, he is not

guilty of embezzlement. In some states this has been changed by statute.

Section 106. Counterfeiting.

The sixth clause of the Eighth Section of the First Article of the United States Constitution provides that Congress shall have power: "To provide for the punishment of counterfeiting the securities and current coin of the United States."

This clause is probably unnecessary. The power to coin money carries with it the power to protect such coinage by punishing its counterfeiting. Especially would this be true under the liberal interpretation of the implied powers of Congress given in *McCulloch vs. Maryland*, and since followed. "The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value; and on account of the impossibility which was foreseen of otherwise preventing the inequalities and the confusion necessarily incident to different views of policy, which in different communities would be brought to bear on this subject. The powers to coin money being thus given to Congress, founded on public necessity, it must carry with it the correlative power of protecting the creature and object of that power. It cannot be imputed to wise and practical statesmen, nor is it consistent with common sense, that they should have vested this high and exclusive authority, and with a view to partaking of the magnitude of the authority itself, only to be rendered im-

mediately vain and useless, as must have been the case had the government been left disabled and impotent as to the only means of securing the objects in contemplation. Under this clause Congress has power to punish persons who bring into the United States counterfeit money, and also those who counterfeit notes of foreign banks. This last power probably belongs to Congress under the power to define and punish " 'offenses against the laws of nations.' " This clause does not prevent the states from passing laws for the punishment of the crime of circulating counterfeit coin of the United States within the state; the two offenses of counterfeiting the coin and passing counterfeit money are essentially different in their character.

Section 107. False Weights and Measures.

The use of false weights and measures is another crime of great danger to commercial transactions. The power to pass laws on this subject belongs to each state in the exercise of the police power. These matters are sometimes regulated by state statute, and sometimes by city and town ordinances.

Section 108. Crimes Under the Interstate Commerce Act.

The criminal provisions of the National Interstate Commerce Act will be discussed in Chapter XV of this volume.

CHAPTER XII.

DAMAGES.

Section 109. Definition and Purpose.

Damages are the pecuniary reparation which the law compels a wrongdoer to make to the person injured by his wrong.¹ The purposes for which damages are given, in general, are to compensate the injured party. Such damages are called compensatory damages. In a few classes of cases, where the defendant has been guilty of extreme misconduct, punitive damages (i.e., for the punishment of the defendant) may be recovered in addition to the compensatory damages.

Section 110. Consequences and Losses.

For the purposes of determining liability, the consequences of wrongful conduct are divided into proximate consequences, and remote consequences. Compensation can be recovered for losses which are the proximate consequences of wrongful conduct, but not for losses which are the remote consequences. Losses are divided into direct and consequential losses. Direct losses are such losses as proceed immediately from wrongful conduct, without the intervention of any intermediate cause. Direct losses must necessarily be proximate consequences of the

¹ Hale on Damages, p. 1.

act, and, therefore, compensation is always recoverable in such cases. Consequential losses may be either proximate or remote.

“Consequential losses are proximate when the natural and probable effect of the wrongful conduct under the circumstances is to set in operation the intervening cause from which the loss directly results. When such is not the natural and probable effect of the wrongful conduct, the losses are remote.”²

Section 111. Damages in Contract.

The leading case, on the subject of what injuries resulting from a breach contract, damages may be recovered from, is that of *Hadley vs. Baxendale*,^{*} and the principles governing this subject cannot be expressed better than in the words of this decision:

“We think the proper rule in such a case as the present is this: Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect to such breach of contract should be such as may fairly and reasonably be considered either breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a con-

^{*} *Hale on Damages*, p. 39.

² 9 Exch. 341; 26 Eng. Law & Eq. 398.

tract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and, in the great multitude of cases, not affected by any special circumstances from such a breach of contract; for, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case, and of this advantage it would be very unjust to deprive them. The above principles are those by which we think the jury ought to be guided in estimating the damages arising out of any breach of contract."

Promises to marry are the only class of contracts for the breach of which exemplary or punitive damages may be given.

CHAPTER XIII.

EQUITY JURISPRUDENCE.

Section 112. Definition and Scope of Equity.

Equity is a supplemental system of jurisprudence developed in the fourteenth and fifteenth centuries for the purpose of supplying the deficiencies of the common law; in other words, to take jurisdiction over those cases where no relief could be obtained at the common law.

Applying the general principle that equity will only take jurisdiction where there is no relief possible at law, it follows that, in general, the fields of the jurisdiction of the equity courts and of the common law courts will be distinct from each other, and that whenever one set of courts have jurisdiction, the other will not.

In some cases, however, we find concurrent jurisdiction by the two courts. Such concurrent jurisdiction may arise in four different ways:

(a) Equity may take jurisdiction on account of the fact that there is no remedy at law, and later a common law remedy may be given.

(b) Equity may take jurisdiction in cases where there is a common law remedy, which is, however, not certain, complete, and adequate.

(c) In cases where jurisdiction is given to

equity courts, by statute, over cases where the common law courts already have jurisdiction.

(d) Where an equity court properly acquires jurisdiction on account of some peculiar equitable principle or remedy involved in the suit, such court may also, in the same case, grant other relief which could have been obtained at common law.

Section 113. Division of Equity.

Equity jurisdiction may be divided into four great divisions, as follows:

- (a) Equitable titles.
- (b) Equitable rights.
- (c) Those cases where equity takes jurisdiction on account of the character or number of the parties.
- (d) Equitable remedies.

Under equitable titles are included such titles as are only recognized and protected in courts of equity. Under this head are included trusts, equitable liens, and the interests of the mortgagor under certain circumstances.

In the division of equitable rights we have the cases where the title itself is recognized by the common law, but where certain rights in connection therewith are only recognized in equity. Under this head are included such rights as contribution and subrogation and relief against accidents, mistake, etc.

The cases where equity takes jurisdiction on account of the character or number of the parties include:

- (a) Suits for or against married women.
- (b) Suits between husband and wife.
- (c) Suits between partners.

(d) Where there are a large number of persons with mutually diverse interests, equity may take jurisdiction in order to prevent the multiplicity of suits. At common law, there can be but two sides to the case, although there can be any number of defendants or plaintiffs, provided the defendants and all the plaintiffs have a common joint interest.

In equity, however, any number of mutually diverse interests, can be adjudicated in the same suit.

Section 114. Trusts.

A trust involves the separation of the legal title and the beneficial use; in other words, one person holds the legal title for the benefit of someone else. There are three parties in each trust: the settlor, who creates the trust, the trustee who holds the legal title, and the cestui que trust, who has the beneficial use.

The settlor may make himself either the trustee or the cestui que trust. The trustee and the cestui que trust can never be the same person.

Section 115. Classification of Trusts.

Trusts are divided into express and implied trusts. An express trust is one created by the express words of the settlor. Express trusts relative to real estate, can only be created in writing. Implied trusts are subdivided into resulting and constructive trusts.

A resulting trust is one where the courts hold that the parties intended to create a trust although they did not do so expressly. The most common instances of resulting trusts are the cases where

property is purchased with the money of one person and the title taken in the name of another.

In the case of constructive trusts, the trust is created against the intention of the parties. Constructive trusts arise in cases where there has been fraud or abuse of a confidential relation, or where the transaction is of a class which presents such opportunity for fraud that the courts discourage them. Trusts are also divided into active and passive trusts. In an active trust, the trustee may have certain duties to perform. In the case of a passive trust, the trustee has no duties to perform and merely holds the title in his name.

Still other classifications of trusts are those into executed and executory trusts, and into private and charitable trusts. Charitable trusts are those created for educational, religious and similar purposes.

Section 116. Trustees.

Trustees may be appointed either by the settlor or by a court of equity. It is an equitable maxim that equity will not suffer a trust to fail for the want of a trustee. Equity courts also have the right to remove a trustee who fails to properly perform his duties. The highest degree of honesty and good faith is required from a trustee but only an ordinary degree of care and skill. Any person may be a trustee, at least, temporarily.

Section 117. Equitable Relief in the Case of Contracts.

The peculiar equitable reliefs in the case of contracts are orders for the specific performance of the

contract, and for the reformation or cancellation of the contract.

Specific performance is an order by a court of equity that a legal contract be carried into effect according to its terms.

The injured party may resort to a court of equity for specific performance, when the legal remedy of pecuniary damages is not a complete and adequate relief.

This form of equitable relief is limited to contracts for the sale of property, and contracts for insurance. There can be no specific performance of contracts for personal services, partnership contracts, contracts to marry, or contracts for the payment of a sum of money.

The specific performance of a contract for the payment of money, would be identical in its effect with that of a judgment at law for damages. The compelling by judicial decree of the specific performance of a contract to marry would be in violation of the ideas and principles of modern society.

The proper forms of equitable relief in the case of written instruments entered into under the influence of fraud or mistake are the reformation or the cancellation of such written instrument.

Equity will decree the cancellation of a written instrument in two classes of cases; (a) where the instrument, although absolutely void, is valid on its face; and (b) where it is voidable on the ground of fraud or mistake.

Section 118. Injunctions.

An injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience.

An interlocutory or preliminary injunction is one issued during the pendency of the suit, prior to the final hearing. Such an injunction continues in force until the final hearing of the case, unless sooner rescinded by a subsequent order of the court. The object of interlocutory injunctions is to keep things in statu quo, not to determine the right itself.

When there is necessity for prompt action an interlocutory injunction may be issued without notice to the defendant. Such an injunction is called an *ex parte* injunction. As soon as he has notice of its issuance the defendant may come in and move to dissolve such injunction. In the Federal Courts no *ex parte* injunctions are issued, but the same results are obtained by what are known as restraining orders.

A perpetual or final injunction is one granted at the final hearing of the case. No perpetual injunction can be granted by an order upon affidavits.

Among the important classes of cases where injunctions will be granted, are those against waste, against nuisance and against trespass, where the trespass would inflict irreparable damage or is a frequently repeated trespass.

Injunctions will not ordinarily be granted against personal torts.

It was formerly held that an injunction would never issue against the commission of a criminal act. This doctrine has been considerably modified during the past few years, and the recognized rule now seems to be that where the issuing of an injunction is warranted by the necessity of protection to property interests, the fact that a crime or statutory offense must be enjoined as incidental thereto will not operate to deprive the court of its jurisdiction.

The general rule may be stated to be that the breach of an affirmative promise in a contract cannot be prevented by an injunction (the proper remedy being specific performance), but that the breach of a negative promise may be. For example, injunctions have been issued against the violation of such agreements as not to disclose information, or not to manufacture and sell a certain article.

A common class of injunctions are those for the protection of patents and copyrights.

Section 119. Mortgages.

A mortgage is a conveyance of either real or personal property, as security for the payment of a debt, or the performance of some act.

Under the common law, a mortgage was considered merely what it imports to be, namely, a deed of the land with a condition subsequent. The condition subsequent which might defeat the estate of the grantee, and re-invest the estate in the grantor, was the repayment of the money by the grantor. If such payment was not made strictly according to the terms of the deed, the estate in the mortgage became absolute. Upon the giving of the mortgage the mort-

gagee acquired the present legal estate, while the mortgagor only retained a possibility of reverter.

Possession passed to the grantee, unless reserved to the grantor by the terms of the deed.

Equity early took a different view of mortgage. Applying the doctrine that equity will look at the intent rather than the form, equity considered the debt as the principal thing and the mortgage merely as security therefor; with the result that a failure to pay the mortgage promptly on time was held not to work a forfeiture of the mortgagor's interest, but merely to render him liable for interest on the amount of the mortgage until its payment. In other words, the damage for the delay in the payment of the mortgage was considered the interest on the sum of money withheld for the time the same was withheld. At first equity only relieved against the forfeiture of the mortgagor's interest, when the act which worked such forfeiture was the result of an accident. Such relief, however, was soon extended to other cases.

"Because of the fact that a mortgage is regarded as of a dual character—a conveyance of an estate in lands, and a security for a debt—bearing one character in a court of law and another in a court of equity, a mortgage at the present day, in the absence of statutes providing otherwise, vests the legal title to the mortgaged property in the mortgagee, at any rate, after condition broken and possession taken."¹

After equity began to relieve against forfeiture in the case of mortgages, there was a period during which equity would relieve against such forfeitures

¹ American and English Ency. of Law, Vol. XX, 900.

after any period of time after breach. This, however, was soon seen to be going too far, as it worked a great hardship upon the mortgagee by preventing him from at any time acquiring a good title. To remedy this injustice, and to produce an equilibrium between the rights of mortgagor and mortgagee, the system of foreclosure of mortgages was introduced.

A foreclosure is any proceeding by which the mortgagor's equity of redemption in the property is cut off beyond possibility of recall."²

At least eight different methods of foreclosure are in force in different states in this country, as follows:

- (a) Strict foreclosure.
- (b) Equitable foreclosure.
- (c) Scire facias.
- (d) Rule nisi.
- (e) Writ of entry.
- (f) Ejectment.
- (g) Advertisement and sale under a power.
- (h) Entry and possession.

Upon a strict foreclosure of a mortgage the property becomes absolutely vested in the mortgagee and the right of the mortgagor to redeem is gone.

In the case of an equitable foreclosure, where the property is sold to satisfy the mortgage, the mortgagor is allowed to redeem the property from the purchaser, within a certain specified time.

A chattel mortgage is a conditional transfer or conveyance of the property, and if the conditions are not duly performed the whole title vests absolutely at law in the mortgagee.

² *Ansonia Nat. Bank's Appeal*, 58 Conn. 260.

The protections given to the mortgagor of real property are, in general, wanting to mortgagors of personal property. The difference is mainly due to the less degree of importance attached by the law to personal than to real property. It is sometimes provided by statute however, that certain mortgages of personal property must be foreclosed in court. For example, the law of Illinois makes this provision in the case of mortgages of household furniture, except in the case of purchase money mortgages.

A bill of sale absolute on its face may be shown by parol to have been intended as a mortgage.

CHAPTER XIV.

BANKRUPTCY.*

Section 120. National and State Bankruptcy Laws.

The classes of legislative powers the right to exercise which have occasioned the principal controversies between the National and State governments, are those legislative powers which the United States Constitution grants to the National government but does not prohibit to the State governments.

An illustration of this class is to be found in the subject of bankruptcy laws. The power to pass such laws is given to Congress, but it is not denied to the states. The Supreme Court has decided that with certain restrictions bankruptcy laws may be passed by the states, but such laws are superseded by any Federal laws which may be passed on the subject. The extent of the right of the several states to pass bankruptcy laws is fully discussed by the Supreme Court in the case of *Sturges vs. Crownshield*, and *Ogden vs. Saunders*. The substance of these decisions is to uphold the rights of the several states to pass bankruptcy laws, subject to the following restrictions:

First. Under Section 10 of Article 1 of the Constitution, which forbids any state to pass any law

* Matters relating solely to procedure in bankruptcy have been in the main omitted from this chapter. In a number of places in the chapter the exact wording of the Federal statute has been followed.

impairing the obligation of contracts, no bankruptcy law passed by any state can affect any debt contracted before the time of the passage of such act. This, however, does not apply to laws merely changing the procedure in bankruptcy without affecting the substantive right.

Second. The extra territorial force of such laws is greatly limited. In general they cannot affect debts owed to non-residents of the state.

Third. Laws passed by the several states on the subject of bankruptcy are subservient to any laws which Congress may pass on the subject. In the past Congress has left this field of the law almost entirely to the state legislatures. Previous to the existing law on this subject, passed in 1898, only three national bankruptcy laws had been passed. The first two acts, those of 1802 and 1840, were very short lived. This third act, passed in 1867, was in force for eleven years.

The remainder of this chapter will be devoted to a discussion of the provisions of the existing National Bankruptcy Law.

Section 121. Bankruptcy Courts.

The Courts having jurisdiction under the National Bankruptcy Act are the various district courts of the United States in the several states, the district courts of the several territories, and the Supreme Court of the District of Columbia. To assist these courts Referees in Bankruptcy are appointed in each district.

Section 122. Voluntary Bankruptcy.

The statute provides that any natural person who owes debts may become a voluntary bankrupt. This right does not belong to corporations. The decisions are in conflict as to whether an infant may be adjudged a bankrupt.

Section 123. Involuntary Bankruptcy.

Acts of bankruptcy by a person shall consist of his having:

(1) Conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or

(2) Transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or

(3) Suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or

(4) Made a general assignment for the benefit of his creditors; or

(5) Admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

To take advantage of any act of bankruptcy a petition to have the person committing such act de-

clared a bankrupt must be filed within four months after the commission of such act.

A person shall be deemed to have given a preference if, being insolvent, he has, without four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

A partnership during the continuation of the partnership business, or after its dissolution, and before the final settlement thereof, may be adjudged a bankrupt.

The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

Section 124. Duties of Bankrupts.

The duties of a bankrupt are thus set out in the statute:

The bankrupt shall

(1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed;

(2) comply with all lawful orders of the court;

(3) examine the correctness of all proofs of claims filed against his estate;

(4) execute and deliver such papers as shall be ordered by the court;

(5) execute to his trustee transfers of all his property in foreign countries;

(6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this Act, coming to his knowledge;

(7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee;

(8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition, if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and

(9) when present at the first meeting of his creditors, and at such other times as the court shall

order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, that he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims, except when presented to him, unless ordered by the court, or a judge thereof, for cause, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town or village of his residence.

Section 125. Protection, Detention, Etc., of Bankrupt.

A bankrupt is exempt from arrest upon civil process except where the writ is issued by a court of bankruptcy for contempt or disobedience of its lawful orders, or where it is issued by a State court, having proper jurisdiction, in a case where a discharge in bankruptcy would not affect the cause of action.

When the Judge in a bankruptcy court considers it necessary he orders the detention of the person of the bankrupt in order to compel his presence to testify in the bankruptcy proceedings.

Whenever a warrant for the apprehension of a

bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

Proceedings in bankruptcy are not abated by the death or insanity of the bankrupt.

Section 126. Compositions.

A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his

creditors, the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject the order of the judge.

The judge shall confirm a composition if satisfied that:

- (1) It is for the best interests of the creditors;
- (2) The bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and
- (3) The offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

Section 127. Liens Dissolved and Conveyances Set Aside by Bankruptcy Proceedings.

A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process, or a judgment

by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if:

(1) It appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or

(2) The party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or

(3) That such lien was sought and permitted in fraud of the provisions of this Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the

passage of this Act and within four months prior to the filing of the petition, with the intent and purpose of his part to hinder, delay, or defraud his creditors, or any of them shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings, or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within the four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected

by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit as aforesaid.

And the court may order such conveyance as shall be necessary to carry the purpose of this section into effect;

Provided, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for injury.

Section 128. Distribution of Bankrupt's Estate.

The following debts of a bankrupt may be proved and allowed against his estate;

(1) A fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not within any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest;

(2) Due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action

which would pass to the trustee and which the trustee declines to prosecute after notice;

(3) Founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of a petition (in) an action to recover a provable debt;

(4) Founded upon an open account, or upon a contract express or implied; and

(5) Founded upon provable debt reduced to judgment after the filing of the petition and before the consideration of the bankrupts application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments.

Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against the estate.

The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment are as follows:

(1) The actual and necessary cost of preserving the estate subsequent to filing the petition;

(2) The filing fees paid by creditors in involuntary cases;

(3) The costs of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties

herein prescribed, and to the bankrupt in voluntary cases, as the court may allow;

(4) Wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and

(5) Debts owing to any person who by the laws of the State or the United States is entitled to priority.

Dividends shall be declared and paid on all allowed claims except such as have priority or are secured.

The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the

estate equals so much before such other creditors are paid any further dividends.

Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full, the balance shall be paid to the bankrupt:

Provided, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

Section 129. Discharge in Bankruptcy.

Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has:

(1) Committed an offense punishable by imprisonment as herein provided; or

(2) With fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of accounts or records from which his true condition might be ascertained.

The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

CHAPTER XV.

THE REGULATION OF COMMERCE.¹

Section 130. The Commerce Clause of the Federal Constitution.

Clause 3: (Congress shall have power) "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The regulation of commerce with foreign relations is intrusted to the central government in the United States by the Constitution. The absence of this power in the central government under the Articles of Confederation constituted one of the chief sources of weakness in that instrument. Scarcely less essential to the harmony and existence of the United States was the placing in the hands of the new central government of the power of regulating commerce between the several States. The absolute necessity of such control had been shown by the controversies between the different States during the period from 1783 to 1787. The power of the United States over commerce (except that confined within the limits of a single State) was made complete by the Constitution giving to it the regulation of commerce with the Indian tribes.

¹This chapter is taken from the work of the author on "United States Constitutional History and Law." On account of the extreme importance of this subject at the present time it has been treated at some length.

The importance of this power of Congress over commerce, and more particularly over interstate commerce, has greatly increased since the early days of the Constitution.

“The commerce clause of the federal Constitution presents the remarkable instance of a national power which was comparatively unimportant for eighty years, and which in the last thirty years has been so developed that it is now, in its nationalizing tendency, perhaps the most important and conspicuous power possessed by the Federal Government.

“The fact is more remarkable because the deficiency in the Articles of Confederation most felt was the lack of this very power, and because the Convention which framed the Federal Constitution was immediately brought about by the recognized necessity of a uniform system in the commercial regulations of the several States.”²

Before the year 1840 the construction of this clause had been involved in but five cases submitted to the Supreme Court of the United States. In 1860 the number of cases in that court involving its construction had increased to twenty; in 1870 the number was thirty; by 1880 the number had increased to seventy-seven; in 1890 the number had increased to one hundred and forty-eight; while at the present time it is over two hundred. An equally rapid increase is to be seen in the number of cases of this character in the Supreme Courts of the States and in the United States Circuit Court and District Court. Up to the year 1840 this clause had been involved in these courts in forty-eight cases,

²“Commerce Clause of the Constitution,” Prentice and Egan, p. 1.

by 1860 in one hundred and sixty-four, by 1890 in eight hundred, and by the close of the nineteenth century in nearly fifteen hundred; while the number of cases on some phrase or other of this subject is yearly increasing.³

Congress having the power to regulate commerce, has the power entirely to prohibit it. Congress once undertook to prohibit foreign commerce. This was in 1807, when the Embargo Act was passed prohibiting commerce with all foreign countries; the Non-Intercourse Act of 1809 modified this so that it only applied to commerce with France and England. These acts were attacked as unconstitutional on the ground that their object was to destroy commerce, not to regulate it. Their constitutionality was upheld, however, in a District Court of the United States,⁴ and the question was never brought before the Supreme Court. That Congress has such power can hardly be doubted. The power to regulate is unlimited, and the prohibition of commerce is but one kind of regulation. It has been held that Congress can prohibit trade with the Indians unless carried on under a license,⁵ and it is but a step from this point to the prohibition of such trade altogether.

The power to regulate foreign and interstate commerce necessarily involves the control of navigable waters over which so large a portion of such commerce must go. The proposition laid down in *Gibbons vs. Ogden*, that the laws of Congress regulating commerce must act within the limits of the

³ *Id.*, pp. 14-15.

⁴ *United States vs. The William*, *American Law Journal*, 25, 55.

⁵ *United States vs. Cisha*, 1 *McLean*, 254.

individual States, carries with the corollary that Congress must have the right of control over the great highways of interstate commerce which run through the States. In *Pennsylvania vs. Wheeling Bridge Company*,⁶ it was held that the Ohio River, being a navigable stream, was subject to the control of Congress, and that therefore, if a bridge was so erected across it as to obstruct navigation, it was a nuisance, and that an act of the legislature of Virginia authorizing its construction, afforded no justification to the bridge company. The power of Congress to regulate commerce comprehends the control for that purpose of all the navigable waters of the United States which are accessible from a State other than that in which they lie, and it is for Congress to determine whether its full powers will be brought into activity, and as to the regulations it will provide.⁷ The authority of the United States includes not only the power to improve the navigation of navigable waters,⁸ but also to regulate their use as a highway.⁹ Congress may authorize the erection of railroad bridges across navigable waters for the purpose of preventing trammels to commerce across the States.¹⁰ But if a river is not, of itself, a highway of commerce with other States or foreign countries, or does not form such highway by its connection with other waters, and is only navigable

⁶ 18 Howard, 435.

⁷ *Gilman vs. Philadelphia*, 3 Wallace, 713. See also *Pennsylvania vs. Wheeling, etc., Bridge Co.*, 18 Howard, 421; *South Carolina vs. Georgia*, 93 U. S., 4; *Miller vs. Mayor of New York Cuct.*, 109 U. S., 385.

⁸ *Wisconsin vs. Duluth*, 96 U. S., 379.

⁹ *Works vs. Junction Ry. Co.*, 5 McLean, 425.

¹⁰ *Railroad Company vs. Richmond*, 119 Wallace, 589.

between different places within the State, then it is not a navigable water of the United States, and the act of Congress, for the enrollment and license of vessels does not apply.¹¹ This power of Congress to regulate commerce gives the general government authority to provide for the punishment of crimes connected with such commerce,¹² and also to make laws relative to maritime torts.¹³

Section 131. What is Commerce?

Commerce, of course, includes the purchase, sale and exchange of commodities.¹⁴ The definition of commerce as "an exchange of commodities," is, however, too narrow. Something more is included in the term. The Supreme Court of the United States has always given a liberal interpretation to the meaning of the word commerce, just as it has given a broad interpretation to the power of Congress over the same. In the famous case of *Gibbons vs. Ogden*, the following opinion as to the meaning of the word commerce is to be found:

"The words are: 'Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.' The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the ap-

¹¹ *The Montello*, 11 Wallace, 411. See also the *Daniel Ball*, 10 Wallace, 557.

¹² *United States vs. Coombs*, 12 Peters, 72.

¹³ *Lord vs. Goodall Steamship Co.*, 102 U. S., 541.

¹⁴ *Addyston Pipe etc. Co. vs. U. S.*, 175 U. S., 241; *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 196-203.

pellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations, commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It described the commercial intercourse between nations, and part of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into ports of the other, and be confined to prescribing rules for the conduct of individuals, and in the actual employment of buying and selling, or of barter.

If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood the word 'commerce,' to comprehend navigation. It was so understood, and must have been so understood, when the Constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in

forming it. The convention must have used the word in that sense because all have understood it in that sense; and the attempt to restrict it comes too late.

If the opinion that 'commerce' as the word is used in the Constitution comprehends navigation also, requires any additional confirmation, that additional confirmation is, we think, furnished by the words of the instrument itself. It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent for it would be absurd, as well as useless, to expect from a granted power that which was not granted—that which the words of the grant could not comprehend. If, then, there are in the Constitution plain exceptions from the power over navigation, plain inhibitions to the exercise of that power in a particular way, it is a proof that those who made these exceptions, and prescribed these inhibitions, understood the power to which they applied as being granted.

The ninth section of the first article declares that 'no preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another.' This clause cannot be understood as applicable to those laws only which are passed for the purpose of revenue, because it is expressly applied to commercial regulations, and the most obvious preference which can be given one port over another, in regulating commerce, related to navigation. But the subsequent part of the sentence is still more explicit. It is, 'nor shall vessels bound to or from any State be obliged to

enter, clear or pay duties in another.' These words have a direct reference to navigation.

The universally acknowledged power of the government to impose embargoes must also be considered as showing that all America is united in that construction which comprehends navigation in the word 'commerce.' Gentlemen have said, in argument, that this is a breach of the war-making power, and that an embargo is an instrument of war, not a regulation of trade. That it may be, and often is, used as an instrument of war, cannot be denied. An embargo may be imposed for the purpose of facilitating the equipment or manning of a fleet, or for the purpose of concealing the progress of an expedition preparing to sail from a particular port. In these, and in similar cases, it is a military instrument, and partakes of the nature of war. But all embargoes are not of this description. They are sometimes resorted to without a view to war, and with a single view to commerce. In such case an embargo is no more a war measure than a merchantman is a ship of war, because both are vessels which navigate the ocean with sails and seamen."

Transportation not only is commerce, but it is the essential element always to be found in cases of interstate commerce. Transportation is the means by which commerce is carried on; without transportation there could be no commerce between nations or among the States.

In every case which has been held to be within the Constitutional grant to Congress actual transportation, either of persons or property, appears

to be the characteristic of foreign commerce and of commerce among the States.¹⁵

In a later case than *Gibbons vs. Ogden*, the Supreme Court said:

“Transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain with regard to them after they shall have been delivered.”¹⁶

The control of Congress over transportation gives to it a like power of regulation over those appliances or instrumentalities by which transportation is effected. The early cases on this point were mainly concerned with regulations affecting steamboats,¹⁷ but in the latter case it has mainly been railroads whose regulation was attempted.¹⁸ As an incident to their control over railroads, it has been held that Congress has the power to authorize the construction of a railroad,¹⁹ or to grant a right of way to a railroad.²⁰

Telegraph lines are so intimately connected with commerce in their use, that their regulation is held to be a regulation of commerce, and as such to be

¹⁵ *Prentice and Egan's Commerce Clause of the Federal Constitution*, citing *Steamship Co. vs. Pennsylvania*, 122 U. S., 326-339; *Von Holst, Constitutional Law of U. S.*, p. 138; *United States vs. E. C. Knight Co.*, 156 U. S., 1; *Philadelphia etc. S. S. Co. vs. Pennsylvania*, 122 U. S., 339; *Railroad Co. vs. Husen*, 96 U. S., 455-470.

¹⁶ *Hawley vs. Kansas City Southern R. Co.*, 187 U. S., 619.

¹⁷ See *Gibbons vs. Ogden*, *supra*.

¹⁸ See *Reading R. R. Co. vs. Pennsylvania*, 15 Wallace, 284; *Chicago and Northwestern R. R. Co. vs. Fuller*, 17-18 Wallace, 560-568.

¹⁹ *California vs. Central Pacific R. Co.*, 127 U. S., 1-39.

²⁰ *Cherokee Nation vs. Southern Kansas R. Co.*, 135 U. S., 641-642.

within the power of Congress.²¹ The same rule applies to telephone lines according to State decisions, there being as yet no Federal adjudication of the question.²²

The handling and slaughtering of animals is commerce.²³

In their regulation of commerce Congress has the same power over corporations that it has over individuals.²⁴ This necessarily results from the fact that the United States Constitution makes no acknowledgment of corporations as artificial persons, and under it they can only be regarded, at least in theory, as aggregations of individuals.

The power to regulate commerce includes the power to declare what articles are legal subjects of commerce.²⁵

Section 132. What Commerce Does Not Include.

While the courts have given a very broad meaning to the term commerce, still not every transaction involving the payment of money is commerce.

Insurance is not commerce. This subject is deserving of special attention here, in view of the present agitation for the national regulation of insurance companies. The only ground upon which the Federal Government could assume such regula-

²¹ *Lelamp vs. Port of Mobile*, 127 U. S., 640-645; *Western Union Telegraph Co. vs. Garnes*, 162 U. S., 634; *Western Union Telegraph Co. vs. Alabama State Bank of Alabama*, 132 U. S., 473.

²² *Central Union Telegraph Co. vs. State*, 118 Ind., 207.

²³ *Hopkins vs. United States*, 171 U. S., 578.

²⁴ *Crutcher vs. Kentucky*, 141 U. S., 57; *Paul vs. Virginia*, 8 Wallace, 162-168.

²⁵ *Bowman vs. Railway Co.*, 125 U. S., 465; *Leisy vs. Hardin*, 135 U. S., 100; *United States vs. Papper*, 98 Federal Reporter, 427.

tion would be as a regulation of commerce, and the decisions of the United States Courts have, without exception, held that insurance is not commerce. In the leading of this subject *Paul vs. Virginia*,²⁶ Mr. Justice Feld, in delivering the opinion of the court said: "Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporation, and the insured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts, between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are then local transactions and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce."

In the *Liverpool and London Life and Fire Insurance Company vs. Massachusetts*,²⁷ the court re-

²⁶ 8 Wallace, 182.

²⁷ 10 Wallace, 566.

affirmed the decision in *Paul vs. Virginia*; and in *Berry vs. Mobile Life Insurance Company*,²⁸ this doctrine was applied to life insurance contracts. This last case also decided that the fact that the parties were domiciled in different States was immaterial. This principle that insurance is not commerce was affirmed by the Supreme Court for the last time (to date) in *New York Life Insurance Company vs. Cravens*²⁹ decided in 1900.

The United States Government cannot restrain a State from passing such insurance regulations as it deems proper, or even from discriminating against foreign insurance companies. A statute of the State of New York provided that when the laws of the other States imposed upon insurance companies incorporated under the laws of New York as a condition to their doing business in such States, greater burdens than were imposed by the laws of New York upon similar companies of such other States doing business in New York, then the same burdens should be imposed upon the companies of such other States imposed upon New York companies. The Supreme Court decided that this law was not unconstitutional under the fourteenth amendment to the Constitution of the United States, providing that no State shall "deny to any person within its jurisdiction the equal protection of its laws."³⁰

The mere production and manufacture of commodities are not acts of commerce. In *Kidd vs. Pearson*,³¹ the constitutionality of the Iowa law pro-

²⁸ Fed. Cas. No. 1, 358.

²⁹ 178 U. S., 401.

³⁰ *Fire Association of Philadelphia vs. New York*, 119 U. S., 110.

³¹ 128 U. S., 1.

hibiting the manufacture of intoxicating liquors within the limits of the State was attacked, on the ground that as the whole or a part of the liquor produced was to be sent out of the State, its manufacture was one step in a transaction of interstate commerce. The court refused to take this view saying:

“We think the construction contended for by plaintiff in error would extend the words of the grant to Congress, in the Constitution, beyond their obvious import, and is inconsistent with its object and scope. The language of the grant is: ‘Congress shall have power to regulate commerce with foreign nations and among the several States,’ etc. . . . The words are used without any veiled or obscure signification. . . . No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacturers and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and transportation incidental thereto constitute commerce.”

A contract entered into for the erection of a factory to be supervised and operated by the officers of a foreign corporation is not a transaction of interstate commerce in the constitutional sense merely because of the fact that the products of the factory are largely sold and shipped to other localities.³²

But where the contract is for its delivery in an-

³² *Diamond Glue Co. vs. U. S. Glue Co.*, 103 Fed. Rep. 838, affirmed 187 U. S., 611.

other State, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale.³³ So, also, a shipment of merchandise C. O. D. from one State into another constitutes interstate commerce.³⁴

A State tax on money or exchange brokers is not in violation of the powers of Congress. This is true even in the case of a broker who deals exclusively in foreign bills of exchange. Foreign bills of exchange are instruments of commerce, but not more so than are the products of agriculture or manufacturers, over which the taxing power of a State extends until they are separated from the general mass of property by becoming exports.³⁵

The power of the United States over commerce will not be allowed to invalidate State laws passed for the prevention of fraud.³⁶

Section 133. The Power of the States Over Interstate Commerce.

The question more than on any other which the respective powers of the Federal and State governments have been the subject of litigation has been that of the extent of the authority of each in the

³³ *Addyston Pipe etc. Co. vs. United States*, 175 U. S., 246.

³⁴ *American Express Co. vs. Iowa*, 196 U. S., 143, reversing 118 Iowa, 447.

³⁵ *Nathan vs. Louisiana*, 8 Howard, 73.

³⁶ *Plumbey vs. Massachusetts*, 155 U. S., 461. This was an oleomargarine case, and the decision has been criticised as being opposed to the doctrine as laid down in *Leisy vs. Hardin*, and as resting upon discrimination rather than law. For other oleomargarine cases see *Schallenbeiger vs. Pennsylvania*, 171 U. S., 1; *Collins vs. New Hampshire*, 121 U. S., 30; *Powell vs. Pennsylvania*, 127 U. S., 678.

regulation of commerce. The famous commerce clause of the Constitution gives Congress the power: "To regulate commerce with foreign nations and among the several States, and with the Indian tribes."³⁷ This provision has never been held to entirely prohibit the States from making any commercial regulations. The right of the States to completely regulate all commerce confined within its own limits is now being disputed. On the other hand, it has been conceded that the power of Congress over interstate commerce is supreme. The doubtful border line has been created by the question whether the States could in any instance legislate on questions of interstate commerce, if such legislation did not conflict with any Federal statute.

Section 134. *Gibbons vs. Ogden.*

Gibbons vs. Ogden,³⁸ was the first case to come before the Supreme Court of the United States which involved this question, whether the power over interstate commerce was exclusive or only concurrent. This case grew out of the action of the Legislature of the State of New York in granting to Robert L. Livingston and Robert Fulton the exclusive right of navigation in all the waters within the jurisdiction of the State, with boats moved by fire and steam, and authorizing the courts of the State to award an injunction to restrain any other person whatever for navigating such waters with boats of this description. This act was assailed by the appellant in the case as unconstitutional, as being

³⁷ United States Constitution, Article 1, Section 8, Clause 3.

³⁸ 9 Wheaton, 1, decided 1824.

in violation of the power of Congress over the interstate commerce. The decision of the particular question involved in this case was not a difficult one. In spite of the decision of the highest court of the State of New York, awarding the injunction asked against the infringement of this monopoly, it was very evident that if a State could pass laws of this character, the control of Congress over interstate commerce was a myth. The Supreme Court decided that the act of the State of New York was unconstitutional as infringing the power of Congress over interstate commerce. The simplicity of the decision of the point at issue in the case seems to have encouraged the court to lay down a sweeping generalization on the supremacy of Congress over all cases of interstate commerce. In their dicta in this case the Supreme Court took a position which after occasioning trouble to the Supreme Court in later cases had finally to be abandoned. The general principle here laid down was that the power of Congress over interstate commerce was not only supreme, but exclusive, and that any State legislation on the subject, even if only referring to points which had not been legislated upon by Congress, was therefore an infringement of the powers of Congress and unconstitutional.

Section 135. Later Cases.

The position taken in *Gibbons vs. Ogden* was soon reiterated in the case of *Brown vs. Maryland*,³⁹ which decision involved the constitutionality of a statute of the State of Maryland imposing a license

³⁹ 12 Wheaton, 419, decided 1827.

tax upon importers for the privilege of selling imported goods. The Supreme Court decided this statute to be unconstitutional, as violating two provisions in the Constitution, (1) that clause which declared that "no State shall, without the consent of Congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." (2) the clause giving Congress power over interstate commerce. The decision in this case is partially based upon the assumed fact that the commercial power is exclusively in Congress, even in cases where Congress had failed to exercise this power by legislating on the subject in question.

Only two years after the decision of *Brown vs. Maryland*, a case was presented to the Supreme Court which compelled that body to render a decision which cannot be harmonized with the dicta in *Gibbons vs. Ogden*. This case, of *Willson vs. Blackbird Creek Marsh Company*,⁴⁰ involved the validity of a law of Delaware, authorizing the erection of a dam across Blackbird Creek, a small stream entirely within the territorial limits of the State of Delaware. There was no act of Congress which related to the subject. Chief Justice Marshall in the course of his decision said: "If Congress had passed an act which bore upon the case, any act in execution of the power to regulate commerce the object of which was to control State legislation over those small navigable creeks into which the tide flows and which abound throughout the lower country of the middle and southern states, we should feel not much difficulty

⁴⁰ 2 Peters, 245, decided 1829.

in saying that a State law coming in conflict with such act would be void. But Congress has passed no such act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with the foreign nations and among the several States; a power which has not been so exercised as to affect the question.

“We do not think that the act empowering the Blackbird Creek Marsh Company to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the subject.”

The effect of this decision upon that in *Gibbons vs. Ogden* has been the occasion of much dispute. No reference is made in the latter decision to the former one, and the presumption would seem to be that the court had in no wise changed its opinion as to the law decided in the former case and intended to leave it in full force. It is nevertheless evident that the decision in *Gibbons vs. Ogden* was broad enough to have justified the court in holding the Delaware statute unconstitutional in *Willson vs. Blackbird Creek Marsh Company*. The court, however, seems to have thought, as is undoubtedly the case, that there was a great distinction between such a regulation of commerce as was involved in *Gibbons vs. Ogden* and that in issue in *Willson vs. Blackbird Creek Marsh Company*. The court, however, was not at this time able to enunciate any general statement which could differentiate the class of cases where State regulation was absolutely

prohibited by the Constitution, and those cases where it might be exercised except where it conflicted with the regulations created by Congress. The later decision, therefore, left the law in a most unsatisfactory condition. The decision proved to be too broad, but no attempt was made to reduce it to its proper limits. The decision in the case of *New York vs. Miln*⁴¹ also failed to establish any satisfactory working rule. The question here involved was the constitutionality of any act of the State of New York requiring masters of all passenger vessels from other States or foreign countries to make a report to the State authorities within twenty-four hours after their vessels had arrived, giving certain specified information as to the passengers carried on the vessels during the voyage just completed. The correctness of the general principles contained in the decision in *Gibbons vs. Ogden* was discussed by the attorneys for both sides in the arguments. The court, however, again evaded the fundamental principle involved and decided in favor of the constitutionality of the law of New York, on the ground that it was merely an exercise of police power, and not a regulation of commerce. A dissenting opinion in this case is based upon the dicta in *Gibbons vs. Ogden*.

The confusion as to the true law of this point was only increased by the decision in the *License Cases*,⁴² where such difference of opinion became manifested among the judges that six out of the seven members of the Supreme Court wrote

⁴¹ 11 Peters, 102.

⁴² 5 Howard, 504.

opinions. The License Cases consisted of the three cases of *Thurlow vs. The Commonwealth of Massachusetts*, *Fletcher vs. The State of Rhode Island*, and *Pierce et al vs. The State of New Hampshire*, which were argued together. The first two named cases arose upon State laws passed for the purpose of discouraging the use of ardent spirits within their respective territories, by prohibiting their sale in small quantities and without licenses previously obtained from the State authorities. The validity of the law of each State was attacked upon the ground that it was repugnant to that clause of the United States Constitution which confers upon Congress the power to regulate commerce with foreign nations and among the several States. In the New Hampshire case there was a State law which prohibited the sale of distilled spirits in any quantity without a license from the selectmen of the town in which the party resided. The plaintiffs in error, who were merchants in Dover, in New Hampshire, purchased a barrel of gin in Boston, brought it to Dover, and sold it in the cask in which it was imported, without a license from the selectmen of the town. For this sale they were indicted, convicted and fined under the law above mentioned.

The constitutionality of all the State laws involved was upheld, but the reasoning and dicta contained in the opinion of the various judges, especially as to the New Hampshire case, were antagonistic to each other in an extreme degree. Three of the judges, including the Chief Justice,⁴³ acknowledged that the law of New Hampshire was a regulation of

⁴² Taney, Catron and Nelson.

interstate commerce, but held it to be valid, as it did not conflict with any United States statute, and then attempted the hopeless task of reconciling this opinion with the decision in *Gibbons vs. Ogden*. Justice Grier stood forth as the extreme exponent of the states rights doctrine by holding that the police power of the State was paramount over the power of Congress to regulate interstate commerce. Another judge⁴⁴ held that the right to import did not include the right to sell. Justice Woodbury took a position very similar to that afterward laid down in the case of *Cooley vs. Wardens of the Port*; in his decision he distinguished between those regulations of commerce which required uniformity of application throughout the country and that other class of regulations which were of only local application or importance, holding that the control of Congress over the former was exclusive, while as regards the latter State regulations might be permitted so long as they did not conflict with the Federal legislation. Justice McLain was the only judge who in this case asserted in his opinion the doctrine of *Gibbons vs. Ogden*.

This doctrine, however, was again upheld by a majority of the court in the *Passenger Cases*.⁴⁵ These cases involved the constitutionality of laws passed by the States of New York and Massachusetts imposing a tax upon all passengers arriving from other States or foreign countries, the proceeds of which taxes were to go, first, to pay the State

⁴⁴ Justice Daniel.

⁴⁵ 7 Howard, 283, decided 1848. The "Passenger Cases" included the cases of *Smith vs. Turner* and *Morris vs. Boston*.

expenses of executing its police laws excluding paupers and convicts, and the surplus, if any, to be applied to the general expenses of the State. Justice Woodbury in a dissenting opinion reiterated the distinction drawn by him in the license cases. Three other judges also dissented from the opinion of the court.

The modern rule on this question received the sanction of the court for the first time in *Cooley vs. Wardens of the Port*,⁴⁶ although it had been anticipated by Mr. Justice Woodbury in his opinions in the License Cases and the Passenger Cases. The Statute whose constitutionality was involved in *Cooley vs. Wardens of the Port* was one of the State of Pennsylvania regulating the employment of pilots in the port of Philadelphia. In their decision in this case the judges of the Supreme Court distinguished between regulations of commerce in which uniformity throughout the United States is desirable and those other regulations which, being local in their nature, may properly admit of variations in different places to meet varying local conditions. As to the first class of regulations, the court affirmed the rule in *Gibbons vs. Ogden*; as to the second class, it held that in the absence of Federal statutes the different States might legislate for their own territory. While the power of Congress was still held supreme in all cases, it was only exclusive in those of the first class. Mr. Justice Curtis, in delivering the opinion of the court, said in part: "When the nature of a power like this is spoken of, when it is said that the nature of the power requires that it

⁴⁶ 12 Howard, 299, decided 1851.

should be exercised exclusively by Congress, it must be intended to refer to the subjects of that power, and to say they are of such a nature as to require exclusive legislation by Congress. Now, the power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects, unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation. Either absolutely to affirm or deny that the nature of this power requires exclusive legislation by Congress is to lose sight of the nature of the subject of this power, and to assert concerning all of them is really applicable to a part."

Although for more than a half a century the case of *Cooley vs. Wardens of the Port* has been recognized as containing the correct principle as to the respective powers of the State and Federal governments, the application of the rule has often been a matter of difficulty. No clear-cut line of demarcation divides the two classes of cases, and it is not always easy to decide whether a certain commercial regulation is general or local in its character. The courts have been compelled to decide each case which came before them on its own particular state of facts.

In *County of Mobile vs. Kimball*⁴⁷ it was held that the improvement of harbors, bays and navigable rivers within the States may be regulated by State

⁴⁷ 102 U. S., 691.

authority, if such regulation does not impair their navigation as permitted under the laws of the United States nor defeat any system for the improvement of their navigation provided by the general government. The court in this decision thus comments on the principle involved: "The uniformity of commercial regulations which the grant to Congress was designed to secure is only for cases where such uniformity is practical. Where, from its nature or the sphere of its operation, the subject is local and limited, special regulations adapted to the immediate locality could only have been contemplated. State action upon such subjects can constitute no interference with the commercial power of Congress, for what that acts the State authority is superseded. Inaction of Congress upon these subjects of a local nature or operation unlike its inaction upon matters affecting all the States and requiring uniformity of regulation, is not to be taken as a declaration that nothing shall be done with respect to them, but is rather to be deemed a declaration that for the time being, and until it sees fit to act, they may be regulated by State authority."

This decision is sometimes referred to as deciding that one test of the constitutionality of a State law on the subject of commerce is whether it would result in discrimination.⁴⁸ Such a deduction from this decision is, however, unwarranted. That the absence of any discrimination between local and interstate commerce is not alone sufficient to render a State law constitutional is shown by the decision in

⁴⁸ See Prentice and Egan, "Commerce Clause of the Federal Constitution," 30.

the case of the State freight tax.⁴⁹ This decision involved the constitutionality of a law of the State of Pennsylvania which laid a tax on every ton of freight carried within the limits of the State. The tax fell both on that commerce which was strictly local and that which was interstate in its character; but in spite of this lack of discrimination the law was held to be an unconstitutional interference with interstate commerce.

Several of the important decisions of the Supreme Court on this question of the extent to which states may properly be allowed to regulate commerce have been concerned with the famous original package rule. The first case involving the application of this principle was that of *Brown vs. Maryland*,⁵⁰ decided in 1827 and already referred to in this chapter. In the decision in this case it was held that as sale is the object of importation, the importation of goods for sale was not complete until the goods had been sold, and that an article could not be considered as incorporated with the general mass of property of the State while it still remained in its original package in the hands of the importer. Forty years later this rule was modified by the decision in the case of *Woodruff vs. Parban*.⁵¹ in which the Supreme Court held that this rule should only be applied in the case of goods imported from foreign countries and not to goods merely imported into one State from another State. This modified rule was followed by the court in the cases

⁴⁹ 15 Wallace 232.

⁵⁰ 12 Wheaton 419.

⁵¹ 8 Wallace 123.

of *Brown vs. Houston*,⁵² and *Robbins vs. Taxing District*.⁵³ In the still more recent cases, however, of *Bowman vs. The Northwestern Railroad*,⁵⁴ and *Leisy vs. Hardin*,⁵⁵ the Supreme Court, although in each case by a divided vote, returned to the doctrine as laid down in *Brown vs. Maryland*.

This last mentioned case grew out of the prohibition law of the State of Iowa. Certain citizens of Illinois, in disregard of this law, shipped beer into Iowa, and upon its seizure by officers of the law, brought an action of replevin to recover it. A judgment by the Supreme Court of Iowa in favor of the defendants was overruled by the Supreme Court of the United States, which held that the right of Congress to provide for the interchange of commodities between the States involved the control over such commerce until the commodities were incorporated into the general mass of property of the State (thus deciding as to interstate commerce what *Brown vs. Maryland* decided as to foreign commerce); that while any State under its general police powers had the right to provide for the security of the lives, limbs, health and comfort of persons and the protection of property, so situated, yet a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police powers of the State unless placed there by congressional action, and that, therefore, as beer was a generally recog-

⁵² 114 U. S., 632, decided in 1885.

⁵³ 120 U. S., 489, decided in 1886.

⁵⁴ 125 U. S., 465, decided in 1887.

⁵⁵ 135 U. S., 100, decided in 1890.

nized article of commerce, no State could prohibit its importation, or its sale in the original packages in which it was imported. The opinion closed with the following paragraph:

“Whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we cannot hold that any articles which Congress recognizes as subjects of interstate commerce are not such, or that whatever are thus recognized can be controlled by State laws amounting to regulations, while they retain that character, although, at the same time, if directly dangerous in themselves the State may take appropriate measures to guard against injury before it obtains complete jurisdiction over them. To concede to a State the power to exclude, directly or indirectly, articles so situated, without congressional permission, is to concede to a majority of the people of a State, represented in the State Legislature, the power to regulate commercial intercourse between the States, by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect union which the constitution was adopted to create. Undoubtedly there is difficulty in drawing the line between the municipal powers of the one government and the commercial powers of the other, but when that line is determined in the particular instance, accommodation to it, without serious inconvenience, may readily be found to use the language of Mr. Justice Johnson in *Gibbons vs. Ogden*, 22 US. 8 Wheat. 1,248 (1,23,80), ‘in

a frank and candid co-operation for the general good.' ”

However sound the doctrine in *Leisy vs. Hardin* may have been, the inconveniences of its application were so great as to induce Congress to alleviate them by the passage of the Wilson Act of Congress of August 8, 1890, which provided, “That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the law of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquors and liquids had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.”

In *re Rahrer* identically the same question as had come in *Leisy vs. Hardin* was before the court, except that the Wilson Act had been passed in the meantime. The court said: “Congress did not use terms of permission to the States to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.”

“All State statutes discriminating in any way against citizens of other States, or the productions of other States, have invariably been held unconsti-

tutional. In *Welton vs. Missouri*,⁵⁶ a State statute was held void which required the payment of a license tax from persons selling, by going from place to place within the State for purpose, goods not the growth or manufacture of the State and did not require such a license tax from persons so selling goods which were the growth or manufacture of the State. On the other hand, in *Howe Machine Company vs. Gage*,⁵⁷ a State statute which imposed a like tax, without discriminating as to the place of growth or produce of material or manufacture, was adjudged to be constitutional and valid as applied to machines made in and brought from another State.

The law of Kentucky (Act of March 2, 1860) required from the agent of every express company not incorporated by the laws of Kentucky a license from the auditor of public accounts before he could carry on business for said company in the State. This was held unconstitutional in *Crutcher vs. Kentucky*,⁵⁸ so far as it applied to interstate commerce.

In *Robbins vs. Shelby County Taxing District*,⁵⁹ a State law requiring the payment of a license tax by drummers and persons not having a regularly licensed house of business within the taxing district, offering for sale or selling any goods by sample, was decided to be unconstitutional as applied to persons offering to sell goods on behalf of merchants residing in other States, because, as the majority of the court held, its effect was 'to tax sale of such goods, or to

⁵⁶ 91 U. S., 275.

⁵⁷ 100 U. S., 676.

⁵⁸ 141 U. S., 47.

⁵⁹ 120 U. S., 489.

offer to sell them, before they are brought into the State.' ”

But in *Delanater vs. South Dakota*,⁶⁰ a law of South Dakota imposing an annual license tax on traveling salesmen selling or offering for sale or soliciting orders for intoxicating liquors in quantities of less than five gallons was held constitutional.

An important constitutional question at the present day is the question of the rights of a corporation, established by one of the States of the Union, in another State. It may be said in general on this point that a corporation is not a citizen of the State which creates it under the clause of the fourth article providing that:

“The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.”

A foreign corporation doing business in a State, however, is protected under the provisions of the fourteenth amendment, that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

A State may thus prohibit corporations from doing business within its limits, or it may admit them under such conditions as it may deem proper; it cannot admit them, however, and then discriminate against them. In a recent case⁶¹ it was held by the United States Circuit Court for the Eastern District of Arkansas that:

“While a State which has admitted a foreign corporation to the right to do business therein has

⁶⁰ 205 U. S., 93.

⁶¹ *Chicago, R. I. & P. Ry. Co. vs. Ludwig*, 136 Fed. Rep., 152.

power to withdraw such permission at pleasure, the exercise of such power is subject to the limitation that where the corporation has been granted a franchise in the nature of a contract it is protected from impairment by the contract clause of the constitution."

Many cases have recently come before the Federal Courts involving the construction of that series of acts which began with the Interstate Commerce Act of 1887.

Section 136. **Crandall vs. Nevada.**

In each of the cases mentioned in the last section which held a State statute to be unconstitutional, such decision was based upon the violation by the statute of some particular clause of the Constitution. There remains to be considered an important and far-reaching case where the unconstitutionality of a law was placed upon the broader grounds of opposition to the general spirit and meaning of the Constitution as a whole.

The principle that a statute, either National or State, might be unconstitutional, even although it was impossible to point out the particular clause or line of the Constitution violated was recognized as early as the famous decision in *McCulloch vs. Maryland*. This doctrine was more particularly applied to commercial regulations in the case of *Crandall vs. Nevada*.⁶²

The State of Nevada enacted a law providing that a capital tax of one dollar should be levied upon every person leaving the State by any railroad or

⁶² 6 Wallace, 35.

stage coach, such tax to be paid by the officers and agent of the railroad companies and the proprietors of the stage coaches. For a violation of this statute Wm. H. Crandall was arrested and imprisoned. As a defense Crandall pleaded the unconstitutionality of the law, and the Supreme Court of Nevada, upholding the statute, he carried the case to the Supreme Court of the United States by a writ of error. The principle enunciated in this case can be seen best by the following extracts from the decision:

In the argument of the counsel for the defendant in error, and in the opinion of the Supreme Court of Nevada, which is found in the record, it is assumed that this question must be decided by an exclusive reference to two provisions of the Constitution, namely: that which forbids any State, without the consent of Congress, to lay any imposts or duties on imports or exports, and that which confers on Congress the power to regulate commerce with foreign nations and among the several States.

The question as thus narrowed down is not free from difficulties. . . .

But we do not concede that the question before us is to be determined by the two clauses of the Constitution which we have examined.

The people of these United States constitute our nation. They have a government in which all of them are deeply interested. This government has necessarily a capitol constructed by law, where its principal operations are conducted. Here sits its legislature, composed of senators and representatives from the States and from the people of the State. Here resides the president, directing through thou-

sands of agents the execution of the laws all over this vast country. Here is the seat of the supreme judicial power of the nation, to which all its citizens have a right to resort to claim justice at its hands. Here are the great executive departments administering the offices of the mails, of the public lands, of the collection and distribution of the public revenues, and of our foreign relations. These are established and conducted under the admitted powers of the Federal Government. That government has a right to call to this point any or all of its citizens to aid in its service, as members of the Congress, of the courts, of the executive departments, and to fill all its other offices; and this right cannot be made to depend upon the pleasure of a State over whose territory they must pass to reach the point where these services must be rendered. The government also has its offices of secondary importance in all other parts of the country. On the sea coasts, and on the rivers it has its ports of entry. In the interior it has its land offices, its revenue offices and its sub-treasuries. In all these it demands the services of its citizens, and is entitled to bring them to these points from all quarters of the nation, and no power can exist in a State to obstruct this right that would not enable it to defeat the purpose for which the government was established.

The Federal power has a right to declare and prosecute wars and, as a necessary incident, to raise and transport troops through and over the territory of any State of the Union.

If this right is dependent in any sense, however limited, upon the pleasure of a State, the govern-

ment itself may be overthrown by an obstruction of its exercise. * * *

But if the government has these rights on her account, the citizen also has correlative rights. He has the right to come to the seat of government or to any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions, he has a right to free access to its seaports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it.

The views here advanced are neither novel nor unsupported by authority. The question of the taxing power of the States, as its exercise has affected the functions of the Federal government, has been repeatedly considered by this court, and the right of the States in this mode to impede or embarrass the constitutional operations of that government, or the rights which its citizens hold under it, has been uniformly denied.”

Crandall vs. Nevada emphasizes both the general supremacy of the Federal government and the wide extent of its power of regulation over commerce. Although the case, directly, merely denies a certain power to the States, it also, by the strongest inference, confers additional powers upon the central government. The control of the United States government as asserted in this case is a far stronger one than that proclaimed in *Gibbons vs. Ogden*, or

Cooley vs. Wardens of the Port. Any power which rests entirely upon a particular clause must of necessity fall short, in the extent of its application, of a power resting upon the spirit and intention of the whole Constitution. Such a power as the latter can be expanded to keep pace with the expansion of the nation, and can always give authority for whatever decrees of Federal regulation of commerce the public welfare may seem to demand.

Section 137. The Interstate Commerce Commission.

Although Congress had passed an act for the regulation of railroads as early as 1866, it was not until the passage of the Interstate Commerce Act in 1887 that any real effort was made for an effective regulation of the business of common carriers who were engaged in interstate commerce. The immediate cause of the passage of this act was the decision in 1886 of the Supreme Court of the United States in *Wabash, St. Louis and Pacific Railroad Co. vs. Illinois*,⁶³ holding that the States had not power to regulate rates within their borders charged by railroads on interstate shipments. This decision not only reversed the decision rendered in the case of the Supreme Court of Illinois, but was also contrary to the early decision of the Supreme Court of the United States in the so-called Granger cases⁶⁴ and clearly showed the necessity of Federal legislation on the subject.

The result was the passage of the Interstate Commerce Act, which became a law on February 4, 1887.

⁶³ 118 U. S., 557; 104 Ill., 476.

⁶⁴ 94 U. S., 113.

The bill provided for the appointment of a commission with a general control over the business of all common carriers engaged in interstate commerce, which transport goods either entirely or partially by railroads. Common carriers engaged in interstate commerce who transport goods entirely by water, and independent of express companies, do not come within the provisions of the act.

The commission has the power to declare the rates charged by railroads unreasonable, and at first they undertook to prescribe rates for the future. This right, however, was soon denied to them by the Supreme Court,⁶⁵ with a consequent very great diminution of the efficiency of the commission. The commission for a number of years could not even prescribe a maximum and minimum rate. The most effective provisions of the "Interstate Commerce Act" have been those against discrimination and against pooling by the railroads, but even these have been avoided and only partially enforced, and the success of the act to date has not been very marked. The responsibility for the failure falls about equally on each of the three departments of the government.

Amendatory acts were passed by the Congress in 1889, 1893, 1903 and 1906. "The first of these was that of 1889 and gave a shipper an additional summary and effective remedy by writ of mandamus to compel the carrier to furnish equal facilities. That of 1893 remedied the difficulty growing out of the inability to enforce self-incriminating testimony. In 1903 was enacted the so-called Expedition Act,

⁶⁵ The Social Diricile Case, 162 U. S., 184, 184; Cincinnati Freight Bureau Case, 176 U. S., 479.

which materially expedited the procedure in suits brought by the United States, or suits prosecuted by direction of the attorney general in the name of the Interstate Commerce Commission. The Amendatory Act of February 9, 1903, known as the Elkins Law, made very important changes, and materially enforced the provisions against discriminations, in that it made the published rates conclusive against the carrier, every deviation therefrom being punishable. The scope of the act was 'also materially extended as to the parties subject to its provisions. Fine was substituted for imprisonment in the penal provisions of the act. None of these amendments have affected the rate-making power of the Commission.'"⁶⁶

There is no definite standard of reasonableness in railroad rates. "The subject of the reasonableness of railroad rates and the factors to be considered in the determination of such reasonableness have thus been considered by the Federal courts in two classes of cases. That is, in cases arising under the Interstate Commerce Act, where the shipper complains that he is charged by the carrier more than a reasonable rate, and in cases arising under State laws, where the carrier complains that he is prohibited by the State law or order of State Commission having the force of law from charging a reasonable rate.

"While the Interstate Commerce Act reaffirms the common law in the requirement of reasonableness, neither the statute nor the common law furnishes any definite standard for the determination of what is reasonable. In ordinary business transactions a reasonable charge for a personal service is

⁶⁶ Judson on Interstate Commerce, p. 62.

the resultant of the free economic forces of supply and demand. It is obvious that under the complicated conditions of railway transportation this free play of the economic forces of supply and demand does not ordinarily exist. When competition does act in determining railway rates, it is only at certain points, as terminal centers, where the rate may be made unreasonable from the carrier's point of view, while at local points on the same line it may not exist at all. The standard of reasonableness, therefore, is one thing for the railroad manager who wishes to secure at all times a reasonable profit upon the cost of service, and a very different thing for the shipper who wishes to secure at all times a reasonable profit for his own business as against his competitors in other communities."⁶⁷

In the case of *United States vs. Trans-Missouri Freight Association*,⁶⁸ the Supreme Court of the United States said on this point:

"There is another side to this question, however, and it may not be amiss to refer to one or two facts which tend to somewhat modify the light in which the subject could be regarded. If only that kind of contract which is in unreasonable restraint of trade be within the meaning of the statute, and declared therein to be illegal, it is at once apparent that the subject of what is a reasonable rate is attended with great uncertainty. What is a proper standard by which to judge the fact of reasonable rates? Must the rate be so high as to enable the return for the whole business done to amount to sum sufficient to

⁶⁷ *Id.* p. 137.

⁶⁸ 166 U. S., 290.

afford the shareholder a fair and reasonable profit upon his investment? If so, what is a fair and reasonable profit? That depends sometimes upon the risk incurred, and the rate in itself differs in different localities. Which is the one to which reference is to be made as the standard? Or is the reasonableness of the profit to be limited to a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended? Or is still another standard to be created, and the reasonableness of the charges tried by the cost of the carriage of the article and reasonable profit allowed on that? And in such case would contribution to a sinking fund to make repairs upon the roadbed and renewal of cars, etc., be assumed as a proper item? Or is the reasonableness of the charge to be tested by reference to the charges for the transportation of the same kind of property made by other roads similarly situated? If the latter, a combination among such roads as to rates would, of course, furnish no means of answering the question. It is quite apparent, therefore, that it is exceedingly difficult to formulate even the terms of the rule itself which should govern in the matter of determining what would be reasonable rates for transportation. While even after the standard should be determined there is such an infinite variety of facts entering into the question or what is a reasonable rate, no matter what standard is adopted, that any individual shipper would in most cases be apt to abandon the effort to show the unreasonable character of a charge sooner than hazard the great expense in time and money necessary to prove the fact, and at the same time incur

the ill will of the road itself in all his future dealings with it. To say, therefore, that the act excludes agreements which are not in unreasonable restraint of trade, and which tend simply to keep up reasonable rates for transportation, is substantially to leave the question of reasonableness to the companies themselves.”

Section 138. The Anti-Trust Act.

The Sherman Act of 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” declared illegal and criminal every contract or combination, in the form of trust or otherwise, or conspiracy in restraint of interstate or foreign trade or commerce. Violations of this act were at first punishable by either fine or imprisonment, but the second form of punishment has been abolished.

A narrow interpretation was given to this act by the Supreme Court of the United States in the Sugar Trust case,⁶⁹ where it was held that the statute could not be held to apply to the case of a State manufacturing company which was acquiring by purchase of the stock of other refining companies through shares of its own stock nearly complete control of the manufacture of refined sugar in the United States.

The most important decision arising under the Anti-Trust Law has been that of the Northern Securities case.⁷⁰

The following synopsis of this case is taken

⁶⁹ United States vs. Knight Company, 156 U. S., 1.

⁷⁰ United States vs. Northern Securities Company, 193 U. S., 197.

from the latest work on the subject of interstate commerce:

“The Northern Securities case was novel in that it decided that the corporation organized under the laws of a State and empowered under its charter to hold the stock of other corporations was prohibited by this act from holding the stock of competing interstate railroad corporations. The illegal combination was founded upon the fact of control of competing railroads in a single authority and the resulting power of direct suppression of competition through such control. Thayer, J., in the circuit court, said that a State could not invest a corporation organized under its laws to do acts in its name which operate in restraint of trade and commerce, and that the court would not consider whether a combination would be of benefit to the public; but that a holding corporation organized under the laws of the State was in violation of the Anti-Trust Act, since it destroyed any active form of competition between the two roads, and it was immaterial that each company had its own board of directors.”

The holding corporation was condemned in this case, not because it was a “holding corporation,” merely, but because it held the stock of subsidiary corporations directly engaged in interstate commerce, and thus controlled competition as between those companies. The act, as such, had nothing to do with holding corporations where the subsidiary corporations are not engaged as competitors directly employed as public carriers in interstate commerce. The right of the holding corporation in other cases depends upon the authorization of its own charter

and the laws of the State whereunder the subsidiary companies are organized and do business.

In the *Trans-Missouri Freight Association* case⁷¹ the question was directly raised whether the prohibitory provisions of the act of 1890 applied to all contracts relative to interstate or foreign trade or commerce, or only to such contracts as provided for unreasonable restraints. The Supreme Court by a vote of five to four held that the act covered all restraints.

In the case of *Addyston Pipe and Steel Co. vs. United States*,⁷² the contract in question was held to be violation of the law, and the rule was laid down that no contractual restraint of trade was enforceable at common law unless it was merely ancillary to some lawful contract involving some such relations as vendor and vendee, partnership, employer, and employee, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of those unjust acts by the other parties. The main purpose of the contract suggests the measure of protection needed, and furnishes a sufficiently uniform standard for determining the reasonableness and validity of the restraints; but where the sole object of both parties in making the contract is merely to restrain competition and enhance and maintain prices, the contract is void and not enforceable at common law, and where made in interstate commerce is violative of the act of 1890.

⁷¹ 166 U. S., 290.

⁷² 175 U. S., 211; 85 Fed. Rep., 271.

Section 139. Recent Statutes and Decisions.

One of the acts that amended the Interstate Commerce Act was that of June 29, 1906. The most important provision of this act is the one giving to the commission the power to fix maximum rates. Most of the other effective provisions contained in the original draft of the bill were stricken out before its final passage.

A recent important decision as to the powers of the State over carriers is that in *Atlantic Coast Line vs. N. C. Ry. Commission*,⁷³ in which the power of the commission to require a carrier to put in an additional train to be run at even a pecuniary loss (of course, however, not causing the company to run its entire business at a loss) but necessary to meet the convenience of the traveling public on connecting with another train, was sustained.

Two other extremely important recent decisions are *Miss. Ry. Comm. vs. Ill. Cent. Ry. Co.*⁷⁴ and *Atlantic Coast Line Ry. Cl. vs. Wharton*, in which it is held that the State, acting through its administrative agent, a railway commission, may, in the absence of congressional legislation, require an interstate train to stop at stations within the State when it is necessary to do so to furnish the citizens proper facilities; yet when the public service is reasonably fulfilled, State cannot compel interstate trains to stop.

These three cases, taken together, give the State full power to compel adequate service to the public.

A number of important cases involving interstate

⁷³ 206 U. S., 1.

⁷⁴ 203 U. S., 35.

commerce in some form or other have recently come before the Federal courts. The prosecution of the Standard Oil Company in 1907 attracted great attention, but the decision decided no important legal question.

Two important decisions have also been handed down by the Supreme Court, the cases being those of *In the Matter of Edward T. Young, Petitioner, and Thomas F. Hunter, Sheriff of Buncombe County, State of North Dakota, vs. James H. Wood*. The legislatures of both Minnesota and North Carolina had passed acts regulating the rates to be charged by railroads in the States, and inflict heavy penalties for the violation of such rates. Injunctions were issued by the circuit courts of the United States against the enforcement of the statutes by the States. The decision in each case was against the constitutionality of the State acts.

The latest amendments to the Interstate Commerce Act to date were those made by the Transportation Act, 1920, which provided for the return of the railroads to their owners after the period of Federal control during the great war, and largely extended the powers of the Commerce Commission. A summary of Federal legislation affecting interstate commerce, up to 1921, will be found in Part IV of the volume entitled "Railway Transportation—History, Operation and Regulation."

APPENDIX A.

CONTRACTS—SELECTED FORMS.

Right-of-Way Contract.

Whereas, The construction of a Railway is contemplated on a line which, as now located, crosses the land hereinafter described,

Now, Therefore, To aid in securing the location and construction thereof, and in consideration thereof, and of One Dollar to me in hand paid, the receipt of which is hereby acknowledged, I Do Hereby Covenant and Agree, for myself, my heirs, executors, administrators and assigns, to sell to the Western Railway Co., a corporation, etc., and assigns a strip of land two hundred feet in width, being one hundred feet in width on each side of the center line of said Railway, as located across my land in Section 18 of Township 12, North Range 10 West, in Washington County, State of Illinois, hereby giving full power to the Western Railway Co., or assigns, on the definite location of said Railway, to enter upon the land and premises of the width aforesaid, and occupy, use and control the same land and construct said Railroad thereon.

And I Further Covenant and agree, for myself, my heirs, executors, administrators and assigns, that upon the demand of said Western Railway Co., or assigns, at any time within six months after the

line of said Railway has been definitely located across said land, I will convey to the said Western Railway Co., or assigns, by Warranty Deed, free and clear of all incumbrances and liens, the said strip of land; and will in and by said Deed or by some other good and sufficient instrument, release and discharge said Western Railway Co., or assigns, from all claims for damages to my land by reason of the construction, operation and maintenance of said Railway, all for the sum of four hundred dollars to be paid to me upon delivery of said Deed.

And any land alongside of and adjoining said strip, which shall (at the option of said Western Railway Co.) be taken, used and appropriated in the construction, operation or repair of said Railway, shall be conveyed upon demand, and paid for in like manner, at the rate of one hundred dollars per acre, for the quantity so taken, used and appropriated outside of the strip aforesaid within four months after the same shall be taken, used and appropriated as aforesaid.

Provided, That this agreement is upon the express condition that the said Railway shall be built across my said land.

Should said Railway not be constructed across my said land, then this agreement shall be null and void.

Witness my hand and seal this 10th day of June,
A. D. 19 .

Horace K. Devons. [Seal.]

County of Washington. }
State of Illinois, } ss

I, Norman Clark, a Notary Public, in and for said County in the State aforesaid, Do Hereby Certify, that Horace K. Devons, personally known to me to be the identical person—— named and described in, and whose name is subscribed to the foregoing instrument as grantor——, and who executed the same, appeared before me this day in person and acknowledged to me that he signed, sealed and delivered said instrument, as, and that the same is his free and voluntary act and deed for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal, this 10th day of
June, A. D. 19 .

[Seal.]

Norman Clark,
Notary Public.

**Agreement and Power of Attorney To Prosecute
Suit for Proportion of Amount To Be
Recovered.**

Whereas, the undersigned, Chester Chase, of Chicago, County of Cook, and State of Illinois, is about to bring a certain action at law against Ernest Martin, in the County of Cook and State of Illinois, to recover the sum of one thousand dollars, in an action arising out of a breach of a contract for the employment of the said Chester Chase by the said Ernest Martin, said contract bearing date of December 1, 19 .

And Whereas, The said Chester Chase has this day appointed Clarke Benedict as his attorney, for the purpose of pleading and pursuing said action to a compromise or to final judgment, execution and collection thereof, according to the terms and provisions of a certain power of attorney hereto attached.

Now, Therefore, It is agreed by and between the said Chester Chase and the said Clarke Benedict, as follows to-wit:

In Consideration of the services already rendered and hereafter to be rendered by said Clarke Benedict as attorney aforesaid in the said cause, the said Chester Chase agrees to pay to said Clarke Benedict therefor a sum of money equal to thirty per cent. of the gross amount recovered from the defendant, and as security for the sum of money to be paid, the said Chester Chase hereby sells, assigns, transfers, and sets over to said Clarke Benedict thirty per cent

of said cause of action and thirty per cent of any sum of money or other property that may be paid by or in behalf of the defendant in said cause, prior or subsequent to any verdict or judgment thereon or upon any compromise thereof, and agrees that said power of attorney shall be irrevocable.

In The Event that nothing is collected or paid upon said cause of action, the said Clarke Benedict is to receive nothing for his services, but in no event is he to be liable for costs of any kind, and Chester Chase is to furnish the evidence required.

It is Further Agreed and Understood by both parties hereto that neither party shall have any power or authority to compromise or settle said claim or suit without the presence of or consent in writing of the other party to this contract, both of whom must sign in discharge of settlement of said claim; provided, however, that said attorney may, in the ordinary course of his employment, collect any final judgment that may be rendered in said cause and discharge of same of record in Court.

It Is Further Agreed, That by virtue of and in consideration of the premises, any and all sums of money or other consideration that may be received by either party to this contract on account of any settlement or compromise of said cause of action or of any judgment or verdict hereafter to be rendered therein shall be held by such party receiving the same, as the agent or bailee of the other party to this contract, and such agent or bailee shall be subject to all the duties, responsibilities, and liabilities attaching to such relation, until each party hereto shall have received his just share of said money or

other consideration thus paid according to the terms of this contract, and shall have duly acknowledged the same in writing hereon.

In Witness Whereof, Both parties have set their hands and seals, this 1st day of June, 19 .

Chester Chase, [Seal.]

Clarke Benedict. [Seal.]

Know All Men by These Presents, That Chester Chase of Chicago, County of Cook, and State of Illinois, have made, constituted and appointed, and by these presents do make, constitute and irrevocably appoint Clarke Benedict, of the City of Chicago, County of Cook, and State of Illinois, my true and lawful attorney, for me and in my name, place, stead and behalf, to institute and prosecute in such Courts of Law and Equity as he, my said attorney, may be best advised, a certain action which I am about to bring against Ernest Martin of Chicago, County of Cook and State of Illinois.

The said action arises out of the breach of a contract for the employment of the said Chester Chase, by the said Ernest Martin, said contract bearing date of December 1, 19 .

And my said attorney is hereby authorized and directed to plead and pursue said cause in any of said Courts to a compromise or to final judgment, execution and the collection thereof, according to the conditions and provisions of a certain contract between myself and my said attorney, executed this day and hereunto attached.

And I hereby give and grant unto him, my said

attorney, full power and authority to do and perform each and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully and completely and to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution in the premises.

And I Hereby Ratify and confirm all that my said attorney or his substitutes shall lawfully do or cause to be done by virtue hereof, and in consideration of the agreement with said Clarke Benedict, hereto attached, this power of attorney is made irrevocable.

In Testimony Whereof, I have hereunto set my hand and seal this 1st day of June, 19 .

Signed, Sealed and Delivered in Presence of

Raymond Kinder,

Frank Spaulding

Chester Chase. [Seal.]

Farm Contract.—Farming Upon Shares.

This Agreement, Made this 20th day of February, A. D. 1908, by and between Arthur L. Mosely, party of the first part, and Edwin Downs, owner of the real estate hereinafter described, party of the second part:

Witnesseth, That said party of the first part hereby covenants and agrees to and with said party of the second part, for the consideration hereinafter named, to well and faithfully till and farm during the term of this contract, being March 1, 19 to March 1, 19 , in a good, husbandman-like manner, and according to the usual course of husbandry the following described premises and real estate, situated in the County of Washington and State of Illinois, viz., northeast quarter of section 20, township 20 north, range 15, east of the third principal meridian.

And Said Party of the First Part hereby further covenants and agrees to sow and plant the said land in such crops, consistent with good husbandry, as said party of the second part shall direct.

Said Party of the First Part also agrees to furnish, at his own cost and expense, all proper and convenient tools, teams, utensils, farm implements and machinery (except as hereinafter otherwise provided) to carry on and cultivate said farm during said term, and to furnish and provide all proper assistance and hire help in and about the cultivation and management of said farm, and to farm and cultivate the said lands in the best manner, and maintain

and keep up the fences so as to protect said crop from injury and waste, and to watch, care for, and protect the same, and protect the fruit and shade trees thereon, and to cut no trees, and to commit no waste or damage on said real estate, and to suffer none to be done, and to crop and cultivate said lands, and harvest, thresh and secure the crops grown thereon in farm-like style and in the best possible manner during said term; and after taking off the crops, to plow immediately, in a good and proper manner, so much and such parts of said farm suitable for a succeeding crop as shall be plowed at the time said party of the first part takes possession thereof; and to keep up and maintain in good repair all structures, stables, cribs, fences and improvements on said farm, and generally do and perform all proper and ordinary work, labor, care and skill requisite, usual or necessary, to work and crop said premises in a proper manner and style, and to the best interests of the party of the second part; and further agrees not to remove any straw or manure from said farm, and not to sell or remove, or suffer to be sold or removed any of the produce of said farm or premises, of any kind, character, or description, until the division thereof, without the written consent of said party of the second part; and until such division, the title and possession of all hay, grain, crops and produce, raised, grown or produced on said premises, shall be and remain in said party of the second part. Upon the termination of this contract, in any way, said party of the first part will yield up said premises to said party of the second part or his order in good condition and repair.

Said Party of the First Part Hereby agrees to pay and deliver to said party of the second part the 1st day of November, 19 , the one-third part of the crops so raised on said lands, or eight hundred dollars for the use of the above described land for the above named term.

In Consideration of the faithful and diligent performance of the foregoing stipulations by said party of the first part, said party of the second part agrees, upon reasonable request thereafter made, to give and deliver on said farm, the two-third part of all grains, vegetables and other crops so raised and secured upon said farm during said term, for the sole use and benefit of said party of the first part, and said party of the first part agrees to deliver at the home of the said party of the second part free of all expense to said party of the second part, one-third of said crops; and said party of the first part further agrees to stack on said premises, free from all charge to said party of the second part, all hay cut during said term.

This Contract is made with the understanding that said premises are at all times subject to sale, and in case of sale said party of the first part shall re-deliver possession of the same on thirty days' written notice, provided he shall be paid for any plowing he may have done on said land for the crop of the season of 19 , and not seeded at time of sale, and be allowed to properly cultivate, harvest and remove any crops that may have been seeded before the time of sale, provided the same are removed prior to November 15, 19 .

In Witness Whereof, said parties have hereunto set their hands and seals the day and year first above written.

Arthur L. Mosely. [Seal.]

Edwin Downs. [Seal.]

Witnesses:

Norman Wood.

Employee's Contract.

Agreement, Made between Frank Spaulding and John Barr.

Witnesseth, Frank Spaulding hires and employs the said John Barr in his business in his store on North Clark St., Chicago, in the capacity of salesman, and agrees to pay him during the time that he shall remain in such employment, twenty dollars per week, all upon the terms and conditions of this agreement.

The said John Barr does agree to and with the said Frank Spaulding, that he will devote his entire time, skill, labor, and attention to said employment, during the time for which he may be so employed, at the wages aforesaid.

It is expressly provided and agreed between the parties hereto, that said Frank Spaulding, may, at any time, terminate said employment, at his election, upon payment to him of what may be coming to him at the rate aforesaid, on the evening of the day of his actual discharge.

Of the cause for discharge, said Frank Spaulding shall be the sole judge.

Any agreement or arrangement by which the said John Barr has been heretofore employed by said Frank Spaulding is, in further consideration of the premises, canceled, released and discharged at this date,—June 15, 19 .

Frank Spaulding, [Seal.]

John Barr. [Seal.]

Coal Contract.

This Article of Agreement, made the 1st day of July, A. D. 19 , between Ritchie Johnson, of the City of Chicago, County of Cook, and State of Illinois, party of the first part, and John D. Hare of County of Cook and State of Illinois, of the second part:

Witnesseth, That the parties to this agreement, in consideration of payments to be made, as hereinafter stated, stipulate and agree as follows: The said party of the first part agrees, subject to the reservation hereinafter named, to sell to the party of the second part one thousand tons of coal, in such quantities as the said party of the second part may require for use, at his factory situated in Chicago, from the date hereof until the 1st day of July, A. D. 19 , at the rate of two dollars and seventy-five cents (\$2.75) per ton, said coal to be delivered by the party of the first part at the said factory of the party of the second part.

The said party of the second part agrees to buy of the party of the first part all the coal he may need for use in said factory from the date hereof until the first day of July, A. D. 19 , and to pay the said party of the first part the rates above mentioned for all coal delivered during the next preceding calendar month. It is further mutually agreed, that the said party of the first part shall not be held responsible for a failure to deliver coal to the said party of the second part during unusual delays of transportation, resulting from strikes, severe storms, or other causes beyond the control of the party of the first

part; or in case of a stoppage of his mines, caused by a strike among his miners or other employes, the said party of the first part to be released from all obligation to furnish coal to said party of the second part during such suspension.

It is further agreed that the said party of the first part will, if required, use his best endeavors to purchase some other corresponding grade of coal, and furnish the same to the said party of the second part, at the lowest market price at which it can be obtained by the said party of the first part; or the said party of the second part, at his option, may secure his supply of coal elsewhere during the suspension.

Witness our hands and seals, the day and year first above written.

Ritchie Johnson,	[Seal.]
John D. Hare.	[Seal.]

Contract For Party-Wall.

This Agreement, made this 1st day of July, A. D. 19 , between George W. West, party of the first part, and Claude Houston, party of the second part:

Witnesseth, That Whereas, the said George W. West, party of the first part, is seized or possessed of a certain lot or piece of ground in the City of Chicago, County of Cook, and State of Illinois, and described as follows: Lot 7, Block 4, in D. F. Smith's Second Addition to the City of Chicago, otherwise known as Number 17 Blank Street in said City, and whereas the said Claude Houston, party of the second part, is seized or possessed of a certain lot or piece of ground in said City and described as follows: Lot 6, Block 4, in D. F. Smith's Second Addition to Chicago, otherwise known as Number 15 Blank Street in said City, which is adjoining and contiguous to the said before mentioned and described lot of ground of the said party of the first part; and whereas it is the wish of the said party of the first part and the said party of the second part, that a party-wall, eighteen inches in thickness shall be built between them, one-half of which is to stand on the said lot of the said party of the first part, and the other half on the said lot of the said party of the second part; and whereas, it is the intention of the said party of the first part to erect a building on his said lot above described, the east wall of which is to be used as a party-wall by the said parties of the first and second parts.

Now, Therefore, This Indenture Witnesseth:

That it is hereby mutually agreed by the said parties, in consideration of the premises, that the said party of the first part may so build and erect a party-wall, eighteen inches in thickness, on the east side of the said lot of the party of the first part, that the center of said party-wall shall be on the division line of the said lots hereinbefore mentioned, of the said parties of the first and second parts, respectively.

And This Indenture Further Witnesseth: That the said party of the first part does hereby covenant, promise, grant and agree that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, have the full and free liberty and privilege of joining to and using the said partition above mentioned, as well below and above the surface of the ground and along the whole length thereof, any building which he or they or any of them may desire or have occasion to erect on the said lot of the said party of the second part, and to sink the joists of such building or buildings into the said partition wall to the depth of six inches, and no further; Provided, always, nevertheless, and on this express condition, that the said party of the second part, his heirs and assigns, as aforesaid, before proceeding to join any building to the said partition wall, and before making any use thereof, or breaking into the same, shall pay or secure to be paid unto the said party of the first part, his heirs and assigns aforesaid, the full moiety or one-half part of the value of the said party-wall, or so much thereof as shall be joined to or used as aforesaid, which value shall be the cost price at the time when such wall is to be used by the said party of the second part, as fixed, esti-

mated and assessed by two arbitrators, one of whom shall be chosen by each of the parties to this contract.

And it is further agreed by and between the said parties that further of the above parties, their or either of their heirs and assigns, shall at any time hereafter desire to build a barn or extend the wall hereinbefore mentioned, the party so building may build and erect such wall or extension in the same manner as above specified, and the other party shall have the same liberty and privilege of joining and using such wall or walls so built and erected as aforesaid, on complying with the same conditions as are hereinbefore required by the said party of the second part, as the manner of joining to the wall above mentioned and paying for the same.

And the said parties further agree and covenant that, if it shall hereafter become necessary to repair or rebuild the whole or any portion of the said party-wall or walls, the expense of such repairing or rebuilding shall be borne equally by them, their respective heirs and assigns, as to do so much and such portion of said walls as the said parties, their heirs and assigns, shall or may use jointly.

It Is Further Mutually Agreed, Between the said parties, that this agreement shall be perpetual, and at all times be construed as a covenant running with the land.

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

George W. West, [Seal.]

Claude Houston. [Seal.]

Signed, Sealed and Delivered in Presence of
William Clarke.

State of Illinois, }
County of Cook. }ss.

I, John Zander, a Notary Public in and for said County, in the State aforesaid, Do Hereby Certify, That Claude Houston and George W. West, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 1st day of July, A. D., 19 ..

Wilber Hazen,
Notary Public.

Contract for Warranty Deed.

Articles of Agreement, Made and concluded the 27th day of June, in the year of our Lord, One Thousand Nine Hundred

Between Robert Goelets, party of the first part, and Harry Mann, party of the second part.

Witnesseth, That the party of the first part, at the request of the party of the second part, and in consideration of the money to be paid and the covenants as herein expressed to be performed by the party of the second part (the prompt performance of which payments and covenants being a condition precedent, and time being the essence of said condition and of this contract, hereby agrees to sell to the said party of the second part all the certain lot and parcel of land, be the same more or less, situated in the City of Chicago, County of Cook, and State of Illinois, known and described as Lot 7, in Block 3, in Walter Jones' Subdivision of the east quarter of Section numbered seventeen (17) in Township numbered 38 North, Third Range East of the Third Principal Meridian with the privileges and appurtenances thereto belonging.

And the said party of the second part in consideration of the premises, hereby agrees to pay to the said party of the first part, his executors, administrators or assigns, at the office of the said Robert Goelets, in the City of Chicago, the sum of three thousand dollars, in manner following, to-wit: One thousand dollars on the delivery of this Contract, and the remainder in four equal payments, the first

payment to be made on the first day of January, A. D. 19 , with interest at the rate of six per cent. per annum from the date hereof, to be paid on the whole sum from time to time remaining unpaid; And Also that he will well and faithfully, in due season, pay and discharge all taxes and assessments, ordinary, extraordinary, or for revenue purposes, imposed upon said premises, or any part thereof subsequent to June 27, 19 . But in case the said party of the second part shall fail to pay any or all such taxes or assessments, upon said premises or appurtenances or any part thereof, whenever and as soon as the same shall pay any or all such taxes or assessments, the amounts of such payments so made by the party of the first part shall immediately thereupon become an additional consideration and payment to be made by the party of the second part hereto for the premises herein described.

And the said party of the second part further agrees, that in case he shall not make the payments above named, or any part thereof, on the day or days they are respectively made payable, he will pay interest on any payment, or part of payment, remaining unpaid after due, at the rate of eight per cent. per annum until paid; but neither the receipt of payments or parts of payments after due, with interest as aforesaid, nor anything herein contained, shall be construed as a waiver of the right of the said party of the first part to declare this Contract forfeited for nonpayment, as hereinafter provided.

And the party of the second part hereby covenants and agrees to and with the party of the first part, that when a building is erected upon the said

lot herein described, it shall be for a private dwelling house only, to cost not less than five thousand dollars. And the party of the second part hereby covenants to and with the party of the first part, that all buildings, erections and improvements now upon or hereafter to be placed upon said premises shall stand as security for the payment of the sums to be paid for the said land, and shall not be removed from said premises without the written consent of the party of the first part. And if any suit at law or in equity shall be commenced to enforce payment for work or material for any building that may be created upon said premises, or against the said party of the second part, for any alleged indebtedness, and said party of the first part shall be made a party thereto, then and in that case he may add to the consideration of this Contract all expenses necessarily incurred by him in that behalf; and collect the same at once, with interest thereon at the rate of eight per cent. per annum.

And the said party of the first part further covenants and agrees with the said party of the second part, that upon the full payment of the purchase money, taxes and interest, as aforesaid, and upon the faithful performance of all the obligations of this Agreement, on the part of the party of the second part to be fulfilled, the said party of the first part, shall and will, without delay, well and faithfully execute, acknowledge and deliver in person, or by attorney duly authorized, to the party of the second part a good and sufficient deed or conveyance of the above described premises, with their

appurtenances, with covenants of warranty, to be delivered on surrender of the duplicate Contract.

And it is Mutually Covenanted and Agreed, By and betewen the parties hereto, that in case default shall be made for the space of thirty days in any payment, or any part thereof, or in any of the conditions herein stipulated to be performed by the party of the second part, it shall and may be lawful for the party of the first part, if he sees fit, to declare this Contract void, without notice to said party of the second part, and to re-enter upon the said premises at any time after such default, without serving on the party of the second part, or other person holding under him or them a notice to quit said land. And in case this Contract shall be so declared void, the party of the second part shall be thenceforth deemed a mere tenant at will under the said party of the first part, and be liable to be proceeded against without notice to quit, under the provisions of an Act regulating proceedings in cases of forcible entry and detainer, and the Acts amending the same. And the party of the first part, in case he shall declare this Contract void, shall be at liberty to sell the land to any person or persons whomsoever, without being liable in law or equity to the party of the second part, or any person claiming under, for any damage in consequence of such sale, or to restore any payment made on account of this Contract; and payments that shall have been made upon or under this Contract shall be forfeited to said party of the first part, and may be held by the party of the first part as stipulated damages for the non-performance of this Contract. And said party of the first

part shall have a right to recover all damages sustained by reason of the holding over of said party without permission.

And it is Further Agreed, That no sale, transfer, assignment or pledge of this contract shall be in any manner binding upon the party of the first part, unless he first consent in writing thereon to such sale, transfer, assignment or pledge, and that in case this Contract shall be recorded he shall deed only to the party of the second part hereto.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

Robert Goelets,	[Seal.]
Harry Mann.	[Seal.]

Articles of Agreement—Long Form.

Articles of Agreement, made this 20th day of June in the year One Thousand Nine Hundred and

Between Philip T. Cowger of Chicago in the County of Cook, and State of Illinois, of the First Part, and Thomas Cowley of Chicago, in the County of Cook, and State of Illinois, of the Second Part.

First,—The said party of the second part does hereby for his heirs, executors and administrators, covenant, promise and agree to and with the said party of the first part, his heir, executors or administrators, or assigns, that he, the said party of the second part, his heirs, executors or administrators, shall and will, for the consideration hereinafter mentioned, on or before the 1st day of October, A. D. 19 , well and sufficiently erect and finish the new three-story, six-flat building, to be erected on lot 7, block 2, in E. A. Dunn's subdivision of the northeast quarter of the northwest quarter of section 18, township 37 north, range 14 east of the third principal meridian, in the City of Chicago, agreeably to the Drawings and Specifications made by J. W. White, and signed by the said parties and hereunto annexed and made part of this agreement, within the time aforesaid, in a good workmanlike manner, to the satisfaction and under the direction of the said J. W. White, to be testified by a writing or certificate under the hand of the said J. W. White, and also shall and will find and provide such good and sufficient materials of all kinds whatsoever, as shall be proper and

sufficient for the completing and finishing of the said building mentioned in the said specifications for the sum of six thousand dollars, payable one-third when the walls are plastered, one-third upon completion of the building, and one-third thirty days after the date of said completion.

And the said party of the first part does hereby, for himself or his heirs, executors, and administrators, covenant, promise, and agree to, and with the said party of the second part his executors and administrators, that he the said party of the first part, his executors or administrators, shall, and will, in consideration of the covenants and agreements being strictly performed and kept by the said party of the second part, as specified, well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators, or assigns, the sum of six thousand dollars, lawful money of the United States of America, in manner following: One-third when the walls are plastered, one-third upon completion of the building and one-third, thirty days after the date of the said completion.

And the said party of the first part does hereby, for himself or his heirs, executors and administrators, covenant, promise and agree to, and with the said party of the second part his executors and administrators, that he the said party of the first part, his executors or administrators, shall, and will, in consideration of the covenants and agreements being strictly performed and kept by the said party of the second part, as specified, well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators, or assigns, the sum of

six thousand dollars, lawful money of the United States of America, in manner following: one-third when the walls are plastered, one-third upon completion of the building, and one-third thirty days after the date of the said completion.

Provided, That in each of the said cases a certificate shall be obtained and signed by the said

.....

And it is Hereby Further Agreed by and Between the Said Parties:

First,—The Specifications and the Drawings are intended to coöperate, so that any works exhibited in the Drawings, and not mentioned in the specifications, or vice versa, are to be executed the same as if it were mentioned in the Specifications and set forth in the Drawings, to the true meaning and intention of the said Drawings and Specifications, without any extra charge whatsoever.

Second,—The contractor, at his own proper cost and charges, is to provide, all manner of materials and labor, scaffolding, implements, moulds, models and cartage of every description, for the due performance of the several erections.

Third,—Should the owner at any time during the progress of the said building request any alteration, deviation, additions or omissions, from the said contract, same will be made, but will be added or deducted from the amount of the contract, as the case may be, by a fair and reasonable valuation.

Fourth,—Should the contractor, at any time during the progress of the said works, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have the power to provide materials and

workmen after three days' notice in writing being given, to finish the said works, and the expense shall be deducted from the amount of the contract.

Fifth,—Should any dispute arise respecting the true construction or meaning of the Drawings or Specifications, the same shall be decided by J. W. White and his decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work, or of the works omitted, the same shall be valued by two competent persons,—one employed by the owner, and the other by the contractor,—and these two shall have power to name an umpire, whose decision shall be binding on all parties.

Sixth,—The owner shall not, in any manner, be answerable, or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same (loss or damage by fire excepted).

Seventh,—No extra work or materials will be paid for without a written agreement made and approved by the architect or owner.

Eighth,—The contractor will be held responsible for all violations of city ordinances, caused by obstructing the street, with his materials or otherwise, and is to hold the owner harmless from all damages or expense arising therefrom.

He will also be responsible for all damages to any person or persons employed in the building or otherwise, resulting from his neglect or lack of proper caution in the performance of his contract, and he must keep a competent man at the works, at all times,

during working hours, to receive instructions from the architect or superintendent.

In Witness Whereof, The said parties to these presents have hereunto set their hands and seals, the day and year above written.

Philip T. Cowger, [Seal.]

Thomas Crowley. [Seal.]

Building Contract—Short Form.

Building Contract, Made this 20th day of June, One Thousand Nine Hundred and , by and between George Beady of Chicago, County of Cook, and State of Illinois, of the First Part, and Henry Grosscup of Chicago, County of Cook, and State of Illinois, party of the second part in these words, to-wit: The said party of the second part covenant and agrees to and with the said party of the first part, to provide at his own expense, all the materials necessary, and to make, erect, build and complete, in a good, substantial and workmanlike manner, the three story six-flat building to be erected on Lot 7, Block 2, in E. A. Smith's subdivision, of the northeast quarter of the northwest quarter of section 18, township 37 north, range 14, east of the third principal meridian, in the City of Chicago, agreeably to the draft plans, explanations, and specifications hereto annexed, of good and substantial materials, and to deliver the said building to the said party of the first part complete finished and ready for occupancy on the 1st day of October, A. D. 19 , next. And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of six thousand dollars, lawful money of the United States, as follows, one-third when the walls are plastered, one-third upon completion of the building, and one-third thirty days after the date of said completion, and for the true and faithful performance of all and every of the covenants and agreements above mentioned, the par-

ties of these presents bind themselves each unto the other, in the penal sum of Dollars, as fixed and liquidated damages, to be paid by the failing or defaulting party.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of

..... [Seal.]

..... [Seal.]

..... [Seal.]

Short Blank.—General Form of Contract.

Contract, Made and concluded the.....day
of..... One Thousand Nine Hundred
and.....by and between.....
of the County of..... and State
of....., party of the first part,
and.....of the.....
.....of.....County of
....., party of the second part, in
these words: The said party of the second part
covenant and agree to and with the said party of
the first part, to.....

.....
And the said party of the first part covenants and
agrees to pay unto the said party of the second part,
for the same, the sum of.....
dollars, lawful money of the United States, as fol-
lows: the sum of....., and for
the true and faithful performance of all and every
of the covenants and agreements above mentioned,
the parties of these presents bind themselves each
unto the other in the penal sum of.....
dollars, as fixed and liquidated damages to be paid
by the failing party.

In Witness Whereof, The parties to these pres-
ents have hereunto set their hands and seals the day
and year first above written.

Sealed and delivered in the presence of

..... [Seal.]
..... [Seal.]
..... [Seal.]

Real Estate Sale Contract.

This Memorandum Witnesseth, That Edwin D. Clarkson hereby agrees to Sell, and William R. Beem agrees to Purchase, at the price of three thousand dollars, the following described real estate, situated in Cook County, Illinois, lot 7, Block 2, in E. A. Smith's subdivision of the northeast quarter of the northwest quarter of section 18, township 37 north, range 14, east of the third principal meridian in the City of Chicago. Subject to (1) existing leases, expiring May 1, 19 , the purchasee to be entitled to the rents, if any, from the time of delivery of Deed; (2) all taxes and assessments levied after the year 1908, (3) any unpaid special taxes or assessments levied for improvements not yet made; also subject to first mortgage for four thousand dollars in favor of John G. Walker, due August 13, 19 , and bearing interest at the rate of six per cent per annum.

Said purchaser has paid five hundred dollars, as earnest money, to be applied on said purchase when consummated, and agrees to pay, within five days after the title has been examined and found good, the further sum of five hundred dollars, at the office of W. E. Smith, Chicago, provided a good and sufficient Warranty Deed, conveying to said purchaser a good title to said premises with waiver and conveyance of any and all estates of homestead therein and all rights of dower in inchoate or otherwise (subject as aforesaid) shall then be ready for delivery. The balance to be paid as follows: One thousand dollars July 1, 19 , and one thousand dollars July 1,

19 , with interest at the rate of six per cent per annum payable semiannually, to be secured by notes and mortgage, or trust deed, of even date herewith, on said premises, in the form ordinarily used. A certificate of title issued by the registrar of titles of Cook County or a complete merchantable abstract of title, or a merchantable copy brought down to date, or a merchantable title guaranty policy to be furnished within a reasonable time. In case the title, upon examination, is found materially defective, within ten days after said abstract is furnished, then, unless the material defects are cured within sixty days after written notice thereof, the said earnest money shall be refunded and this contract is to become inoperative.

Should said purchaser fail to perform this contract promptly on his part, at the time and in the manner therein specified, the earnest money paid as above shall, at the option of the vendor, be forfeited as liquidated, including commissions payable by vendor, and this contract shall be and become null and void. This is of the essence of this contract, and of all the conditions thereof.

This contract and the said earnest money shall be held by W. E. Smith for the mutual benefit of the parties hereto.

In Testimony Whereof, said parties hereto set their hands and seals this 20th day of June, A. D. 19 .

Edwin D. Clarkson,	[Seal.]
William R. Beem.	[Seal.]

APPENDIX B.

FORMS IN BANKRUPTCY.

Form No. 1.—Debtor's Petition.

To the Honorable.....,
Judge of the District Court of the United States,
for the.....District of..... :
The petition of....., of
....., in the County of.....,
and District and State of.....,
(state occupation), respectfully represents:

That he has had his principal place of business
(or has resided, or has had his domicile) for the
greater portion of six months next immediately pre-
ceding the filing of this petition at.....,
within said judicial district; that he owes debts which
he is unable to pay in full; that he is willing to sur-
render all his property for the benefit of his cred-
itors except such as is exempt by law, and desires
to obtain the benefit of the Acts of Congress relating
to bankruptcy.

That the schedule hereto annexed, marked A, and
verified by your petitioner's oath, contains a full and
true statement of all his debts, and (so far as it is
possible to ascertain) the names and places of resi-
dence of his creditors, and such further statements
concerning said debts as are required by the pro-
visions of said Acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

.....
, Attorney.

United States of America, }
 District of.....} ss.

I,, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

.....,

Petitioner.

Subscribed and sworn to before me this.....day
 of....., A. D.

.....,

.....

(Official character.)

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPTCY.

Schedule A . (1).

Statement of All Creditors Who are to be Paid in Full, or to Whom Priority is Secured by Law.

Claims which have priority.	Reference to ledger or voucher.	Names of Creditor.	Residence (if un- known, that fact must be stated).	Where and when con- tracted.	Nature and considera- tion of the debt and whether contracted as partner or joint contractor and if so, with whom	Amount.	
						\$	c.
(1) Taxes and debts due and owing to the United States.							
(2) Taxes due and owing to the State of..... or to any county, district, or munic- ipality thereof.							
(3) Wages due work- men, clerks, or servants, to an amount not ex- ceeding \$300 each, earned within three months be- fore filing the pe- tition.							
(4) Other debts hav- ing priority by law.							
					Total		

.....,
Petitioner.

Schedule A (3).

Creditors Whose Claims are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to ledger or voucher.	Names of Creditors.	Residence. (if unknown, that fact must be stated).	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory notes, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount.
				Total	

.....,

Petitioner.

Oath to Schedule A.

United States of America, }
 District of....., } ss:

On this.....day of....., A. D.
, before me personally came.....
 the person mentioned in and who subscribed to the
 foregoing schedule, and who, being by me first duly
 sworn, did declare the said schedule to be a state-
 ment of all his debts, in accordance with the Acts
 of Congress relating to bankruptcy.

Subscribed and sworn to before me, this.....
 day of....., A. D.

.....,

(Official character.)

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

Schedule B (1).

Real Estate.

Location and description of all Real Estate owned or held by him.	Incumbrances thereon, if any, and dates thereof.	Statement of Particulars relating thereto.	Estimated value.	
			\$	c.
		Total		

.....,
 Petitioner.

Schedule B (2).
Personal Property.

a.—Cash on hand.....		\$	c.
b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately).....			
c.—Stock in trade, in——business of—— at——, of the value of——.....			
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:.....			
e.—Books, prints, and pictures, viz:.....			
f.—Horses, cows, sheep and other animals (with number of each) viz:.....			
g.—Carriages and other vehicles, viz:.....			
h.—Farming stock and implements of husbandry, viz:			
i.—Shipping, and shares in vessels, viz:....			
k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz:			
l.—Patents, copyrights, and trade-marks, viz:			
m.—Goods, or personal property of any other description with the place where each is situated, viz:			
	Total		

.....,
Petitioner.

Schedule B (3).

Choses in Action.

		Dollars	Cents
a.—Debts due petitioner on open account....			
b.—Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds			
c.—Policies of insurance			
d.—Unliquidated claims of every nature, with their estimated value			
e.—Deposits of money in banking institutions and elsewhere			
	Total		

.....,

Petitioner.

Schedule B (4).

Property in Reversion, Remainder, or Expectancy,
Including Property Held in Trust for the Debtor
or Subject to Any Power or Right to Dis-
pose of or to Charge.

(N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed, of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of same, as far as known to the debtor.)

General Interest.	Particular description.	Supposed Value of My Interest.	
Interest in land.....		\$	c.
Personal property.....			
Property in money, stock, shares, bonds, annuities, etc.....			
Rights, and powers, legacies and bequests			
	Total		
Property heretofore conveyed for benefit of creditors		Amount real- ized from pro- ceeds of prop- erty conveyed.	
What portion of debtor's property has been conveyed by deed of an assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom con- veyed; amount realized therefrom, and disposal of same, so far as known to debtor		\$	c.
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy			
	Total		

.....,
Petitioner.

Schedule B (5).

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if, any portion of it is real estate, its location, description, and present use.

		Valuation.	
		\$	c.
Military uniform, arms, and equipments			
Property claimed to be exempted by State laws; its description and present use; and reference given to the statute of the State of the State creating the exemption.....			
	Total		

.....,

Petitioner.

Schedule B (6).

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books

Deeds

Papers

.....,
Petitioner.

Summary of Debts and Assets.

(From the Statements of the Bankrupt in Schedules
A. and B.)

Schedule A. 1. (1) Taxes and debts due United States			
" " 1. (2) Taxes due States, counties, districts, and municipalities			
" " 1. (3) Wages			
" " 1. (4) Other debts preferred by law			
" " 2. Secured claims			
" " 3. Unsecured claims.....			
" " 4. Notes and bills which ought to be paid by other parties thereto.....			
" " 5. Accommodation paper....			
Schedule A. total.....			
Schedule B. 1. Real estate.....			
" " 2-a Cash on hand.....			
" " 2-b Bills, promissory notes, and securities			
" " 2-c Stock in trade.....			
" " 2-d Household goods, etc.....			
" " 2-e Books, prints, and pictures...			
" " 2-f Horses, cows, and other animals			
" " 2-g Carriages and other vehicles..			
" " 2-h Farming stock and implements			
" " 2-i Shipping and shares in vessels			
" " 2-k Machinery, tools, etc.....			
" " 2-l Patents, copyrights and trademarks			
" " 2-m Other personal property.....			
" " 3-a Debts due on open accounts..			
" " 3-b Stocks, negotiable bonds, etc..			
" " 3-c Policies of insurance.....			
" " 3-d Unliquidated claims.....			
" " 3-e Deposits of money in banks and elsewhere.....			
" " 4 Property in reversion, remainder, trust, etc.....			
" " 5 Property claimed to be excepted			
" " 6 Books, deeds, and papers....			
Schedule B. total.....			

Oath to Schedule B.

United States of America, }
 District of....., } ss:

On this.....day of....., A. D.
, before me personally came.....
 the person mentioned in and who subscribed to the
 foregoing schedule, and who, being by me first duly
 sworn, did declare the said schedule to be a state-
 ment of all his estate, both real and personal, in
 accordance with the Acts of Congress relating to
 bankruptcy.

.....

.....

(Official character.)

(Form No. 2.)

Partnership Petition.

To the Honorable.....,
Judge of the District Court of the United States,
for the.....District of.....:
The petition of.....
respectfully represents:

That your petitioners and.....
have been partners under the firm name of.....
....., having their principal
place of business at....., in the County
of....., and District and State of
....., for the greater portion of
the six months next immediately preceding the filing
of this petition; that the said partners owe debts
which they are unable to pay in full; that your peti-
tioners are willing to surrender all their property
for the benefit of their creditors, except such as is
exempt by law, and desire to obtain the benefit of
the Acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and
verified byoath, contains a full and
true statement of all debts of said partners, and, so
far as possible the names and places of residence
of their creditors, and such further statements con-
cerning said debts as are required by the provisions
of said Acts.

That the schedule hereto annexed, marked B, and
verified byoath, contains an ac-
curate inventory of all the property, real and per-
sonal, of said partners, and such further statements

concerning said property as are required by the provisions of said Acts.

And said.....further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residences of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts; and that the schedule hereto annexed marked D, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

And said.....further states that the schedule hereto annexed, marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residences of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts; and that the schedule hereto annexed marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

And said.....further states that the schedule hereto annexed, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residences of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts; and that the

schedule hereto annexed marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

And said.....further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residences of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts; and that the schedule hereto annexed marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

Wherefore your petitioners pray that the said firm may be adjudged by a decree of the court to be bankrupts within the purview of said Acts.

.....,

Petitioners.

....., Attorney.

....., the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

.....,

Petitioners.

Subscribed and sworn to before me, this.....
day of.....A. D.

.....,

(Official character.)

(Schedules to be annexed corresponding with
schedules under Form No. 1.)

(Form No. 3.)

Creditor's Petition.

To the Honorable.....,
 Judge of the District Court of the United States
 for the.....District of.....:
 The petition of....., of.....,
 and....., of....., and.....
 of....., respectfully shows:

That....., of.....,
 has for the greater portion of six months next pre-
 ceding the date of filing this petition, had his princi-
 pal place of business (or resided, or had his domicile),
 at....., in the County of.....
 and State and District aforesaid, and owes debts to
 the amount of \$1,000.

That your petitioners are creditors of said.....
, having provable claims amount-
 ing in the aggregate in excess of securities held by
 them, to the sum of \$500. That the nature and
 amount of your petitioners' claims are as follows:

.....

 And your petitioners further represent that said
is insolvent, and that within
 four months next preceding the date of this petition
 the said.....committed an act
 of bankruptcy, in that he did theretofore, to-wit, on
 this.....day of.....

Wherefore your petitioners pray that service of
 this petition, with a subpœna, may be made upon
as provided in the Acts of

Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said Acts.

.....,
.....,
.....,
Petitioners.
....., Attorney.

United States of America, {
District of....., { ss:

.....,
....., being three of the petitioners above named, do hereby solemn oath that the statements contained in the foregoing petition, subscribed by them are true.

Before me,, this.....day
of.....,

.....,
.....

(Official character.)

(Schedules to be annexed, corresponding with schedules under Form No. 1.)

(Form No. 4.)

Order to Show Cause Upon Creditors' Petition.

In the District Court of the United States for the
District of.....

In the matter of	}	
.....		In Bankruptcy.
.....		

Upon consideration of the petition of.....
 that.....be declared a bankrupt, it is
 ordered that the said.....do appear
 at this court as a court of bankrupt, to be holden
 at....., in the District aforesaid, on the
day of....., ato'clock
 in the.....noon, and show cause, if any there
 be, why the prayer of said petition should not be
 granted; and

It is further ordered that a copy of said petition,
 together with a writ of subpœna, be served on said
, by delivering the same to
 him personally or by leaving the same at his usual
 place of abode in said District, at least five days
 before the day aforesaid.

Witnesss the Honorable....., judge
 of the said court, and the seal thereof, at.....,
 in said District, on the.....day of.....,
 A. D.

[Seal of]
 [the court.]

.....,
 Clerk.

(Form No. 5.)

Subpœna to Alleged Bankrupt.

United States of America, }
District of }
 }

To....., in said district, greeting:

For certain causes offered before the District Court of the United States of America within and for the.....District of....., as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden to....., in said District, on the.....day of..... A. D., to answer to a petition filed by.....in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witnesss the Honorable....., judge of said court, and the seal thereof, at....., this.....day of, A. D.

[Seal of]
 [the court.]

.....

Clerk.

(Form No. 6)

Denial of Bankruptcy.

In the District Court of the United States for the
District of.....

In the matter of }
 } In Bankruptcy.

At....., in said District, on the.....day
 of....., A. D.

And now the said.....appears,
 and denies that he has committed the act of bank-
 ruptcy set forth in said petition, or that he is in-
 solvent, and avers that he should not be declared
 bankrupt for any cause in said petition alleged; and
 this he prays may be required of by the court (or, he
 demands that the same may be inquired of by a jury).

Subscribed and sworn to before me this.....
 day of....., A. D.

.....,
 (Official character.)

(Form No. 7.)

Order for Jury Trial.

In the District Court of the United States for the
District of.....

In the matter of	} In Bankruptcy.
.....	
.....	

At....., in said district. on the.....
 day of....., 19...

Upon the demand in writing filed by.....
, alleged to be a bankrupt, that the
 fact of the commission by him of an act of bankruptcy
 and the fact of his insolvency may be inquired of by
 a jury, it is ordered that said issue be submitted to a
 jury.

.....,
 Clerk.

[Seal of]
 [Court.]

(Form No. 8.)

Special Warrant to Marshal.

In the District Court of the United States for the
District of.....

In the matter of }
 } In Bankruptcy.
 }

To the marshal of said district or to either of his
 deputies, greeting:

Whereas, a petition for adjudication of bank-
 ruptcy was, on the.....day of.....,
 A. D. 19..., filed against....., of
 the county of.....and State of.....
, in said district, and said petition is
 still pending; and whereas it satisfactorily appears
 that said..... has committed an act of
 bankruptcy (or has neglected or is neglecting, or is
 about to so neglect his property that it has thereby
 deteriorated or is thereby deteriorating or is about
 thereby to deteriorate in value) you are therefore
 authorized and required to seize and take possession
 of all the estate, real and personal, of said.....
, and of all his deeds, books of account,
 and papers, and to hold and keep the same safely
 subject to the further order of the court.

Witness the Honorable.....,
 judge of said court, and the seal thereof, at.....

....., in said district, on the..... day of
, A. D. 19...

.....,

Clerk.

[Seal of]
 [the Court.]

By virtue of the within warrant, I have taken
 possession of the estate of the within named.....
, and of all his deeds, books of account,
 and papers which have come to my knowledge.

.....,

Marshal (or Deputy Marshal).

Fees and Expenses.

1. Service of warrant.....
2. Necessary travel, at the rate of six
 cents a mile each way.....
3. Actual expenses in custody of prop-
 erty and other services as follows:
 (Here state the particulars.)

.....,

Marshal (or Deputy Marshal).

District of....., A. D. 19...

Personally appeared before me the said.....
, and made oath that the above expenses
 returned by him have been actually incurred and
 paid by him, and are just and reasonable.

.....,

Referee in Bankruptcy.

(Form No. 9.)

Bond of Petitioning Creditor.

Know all men by these presents: That we,
, as principal, and.....,
 as sureties, are held and firmly bound unto.....
, in the full and just sum of.....
 Dollars, to be paid to the said.....,
 executors, administrators, or assigns, to which pay-
 ment, well and truly to be made, we bind ourselves,
 our heirs, executors, and administrators, jointly and
 severally, by these presents.

Signed and sealed this.....day of.....,
 A. D. 19...

The condition of this obligation is such that
 whereas a petition in bankruptcy has been filed in
 the district court of the United States, for the
district of.....against the
 said....., and the said.....
 has applied to that court for a warrant to the marshal
 of said district directing him to seize and hold the
 property of said....., subject to the fur-
 ther orders of said district court.

Now, therefore, if such a warrant shall issue for
 the seizure of said property, and if the said.....
 shall indemnify the said.....
 for such damages as he shall sustain in the event
 such seizure shall prove to have been wrongfully
 obtained, then the above obligation to be void, other-
 wise to remain in full force and virtue.

Sealed and delivered in the presence of

.....

.....

..... [Seal.]

..... [Seal.]

..... [Seal.]

Approved this.....day of.....,
A. D. 19...

.....

District Judge.

Form No. 10.)

Bond to Marshal.

Know all men by these presents: That we,
, as principal, and.....,
 as sureties, are held and firmly bound unto.....
, marshal of the United States for the
district of....., in the full
 and just sum of.....dollars, to be paid to
 the said....., his executors, administra-
 tors, or assigns, to which payment, well and truly to
 be made, we bind ourselves, our heirs, executors,
 and administrators jointly and severally, by these
 presents.

Signed and sealed this..... day of.....,
 A. D. 19...

The condition of this obligation is such that
 whereas a petition in bankruptcy has been filed in
 the district court of the United States for the.....
district of.....against the said
, and the said court has issued a
 warrant to the marshal of the United States for said
 district, directing him to seize and hold property of
 the said....., subject to the further order
 of the court, and the said property has been seized
 by said marshal as directed, and the said district
 court upon a petition of said..... has
 ordered the said property to be released to him.

Now, therefore, if the said property shall be
 released accordingly to the said.....
 and the said.....being adjudged a bank-
 rupt, shall turn over said property or pay the value

thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

.....
.....
..... [Seal.]
..... [Seal.]
..... [Seal.]

Approved this.....day of.....,
A. D. 19...

.....
District Judge.

Form No. 11.—Adjudication that Debtor Is not Bankrupt.

In the District Court of the United States for the
District of.....

..... In the matter of	}	In Bankruptcy.
---	---	----------------

At....., in said District, on.....day
 of....., A. D., before the Honorable
, judge of the District of.....

This cause come on to be heard at.....
 in said court, upon the petition of.....
 that.....be adjudged a bankrupt within
 the true intent and meaning of the Acts of Congress
 relating to bankruptcy, and (here state the proceed-
 ings, whether there was no opposition, or, if opposed,
 state what proceedings were had).

And thereupon, and upon consideration of the
 proofs in said cause (and the argument of counsel
 thereon, if any), is was found that the facts set forth
 in said petition were not proved; and it is therefore
 adjudged, that said.....was not a
 bankrupt, and that said petition be dismissed, with
 costs.

Witness the Honorable....., judge
 of said court, and the seal thereof, at....., in
 said District, on the.....day of.....,
 A. D.

.....,
 Clerk.

Form No. 12.—Adjudication of Bankruptcy.

In the District Court of the United States for the
District of.....

.....	}	In Bankruptcy.
In the matter of		
.....		
.....		

At....., in said District, on the.....day
 of....., A. D., before the Honorable
, judge of said court in bankruptcy,
 the petition of.....that.....
 be adjudged a bankrupt, within the true intent and
 meaning of the Acts of Congress relating to bank-
 ruptcy, having been heard and duly considered, the
 said.....is hereby declared and adjudged
 bankrupt accordingly.

Witness the Honorable....., judge
 of said court, and the seal thereof, at.....,
 in said District, on the.....day of.....,
 A. D.

.....,
 Clerk.

[Seal of]
 [the court.]

Form No. 13.—Appointment, Oath and Report of Appraisers.

In the District Court of the United States for the
District of.....

.....	}	In Bankruptcy.
In the matter of		
.....		
.....		

It is ordered that....., of.....,
of.....and....., of
, three disinterested persons be,
 and they are hereby appointed appraisers to appraise
 the real and personal property belonging to the estate
 of the said bankrupt set out in the schedules now
 on file in this court, and report their appraisal to
 the court, said appraisal to be made as soon as may
 be, and the appraisers to be duly sworn.

Witness my hand this.....day of.....,
 A. D.

.....,
 Referee in Bankruptcy.

.....District }
 of..... } ss:

Personally appeared the within named.....
 and severally made oath that they will fully and
 fairly appraise the aforesaid real and personal prop-
 erty according to their best skill and judgment.

.....,

We, the undersigned, having been notified that
 we were appointed to estimate and appraise the real
 and personal property aforesaid, have attended to
 the duties assigned us, and after a strict examina-
 tion and careful inquiry, we do estimate and appraise
 the same as follows:

	Dollars	Cents

In witness whereof we hereunto set our hands, at
, this.....day of.....,
 A. D.

.....,

Form No. 14.—Order of Reference.

In the District Court of the United States for the
District of.....

.....	} In Bankruptcy.
In the matter of	
.....	
.....	

Whereas,of.....,
 in the county of.....and District afore-
 said on the.....day of....., A. D.,
 was duly adjudged a bankrupt upon a petition filed
 in this court by (or against) him on theday
 of....., A. D., according to the
 provisions of the Acts of Congress relating to
 bankruptcy,

It is therefore ordered, that said matter be re-
 ferred to....., one of the referees in
 bankruptcy of this court, to take such further pro-
 ceedings therein as are required by said Acts; and
 that the said.....shall attend before
 said referee on the.....day of....., at
, and thenceforth shall submit to
 such orders as may be made by said referee or by
 this court relating to said bankruptcy.

Witness the Honorable....., judge
 of the said court, and the seal thereof, at.....,
 in said District, on the.....day of.....,
 A. D.

[Seal of]
 [the court.]

.....,
 Clerk.

Form No. 15.—Order of Reference in Judge's Absence.

In the District Court of the United States for the
District of.....

.....	} In Bankruptcy.
In the matter of	
.....	
.....	

Whereas on the.....day of.....,
 A. D., a petition was filed to have.....,
 of....., in the County of.....and
 District aforesaid, adjudged a bankrupt according to
 the provisions of the Acts of Congress relating to
 bankruptcy, and whereas the judge of said court
 was absent from said District at the time of filing
 of said petition (or in case of involuntary bank-
 ruptcy, on the next day after the last day on which
 pleadings might have been filed, and none have been
 filed by the bankrupt or any of his creditors) it is
 thereupon ordered that the said matter be referred
 to....., one of the referees in bank-
 ruptcy of this court, to consider said petition and
 take proceedings therein as are required by said
 Acts; and that the said.....shall
 attend before said referee on the.....day of
, A. D., at.....

Witness my hand and seal of the said court at
in said District, on the.....day
 of....., A. D.

[Seal of]
 [the court.]

.....,
 Clerk.

Form No. 16.—Referee's Oath of Office.

I,, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the Constitution and Laws of the United States. So help me God.

.....
 Subscribed and sworn to before me this.....
 day of....., A. D.

.....,
 District Judge.

Form No. 17.—Bond of Referee.

Know all men by these presents:

That we.....of.....as principal, and.....of....., and....., of....., as sureties are held and firmly bound to the United States of America in the sum of.....dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this.....day of....., A. D.

The condition of this obligation is such that whereas the said.....has been on the.....day of....., A. D. 189..., appointed by the Honorable....., judge of the District Court of the United States for theDistrict of..... a referee in bankruptcy, in and for the County of..... in said District, under the Acts of Congress relating to bankruptcy.

Now therefore, if the said.....shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

.....(L. S.)

.....(L. S.)

.....(L. S.)

Approved this.....day of....., A. D.

District Judge.

Form No. 18.—Notice of First Meeting of Creditors.

In the District Court of the United States for the
District of.....
 In Bankruptcy.

.....	}	In Bankruptcy.
In the matter of		
.....		
Bankrupt.		
.....		

To the creditors of....., of.....,
 in the County of..... and District afore-
 said, a bankrupt.

Notice is hereby given that on the.....day
 of....., A. D., the said.....
 was duly adjudicated bankrupt; and that the first
 meeting of his creditors will be held at.....
 in....., on the.....day of.....,
 A. D., ato'clock, in the.....noon, at
 which time the said creditors may attend, prove their
 claims, appoint a trustee, examine the bankrupt, and
 transact such other business as may properly come
 before said meeting.

.....,
 Referee in Bankruptcy.

.....,

Form No. 19.—List of Debts at First Meeting.

In the District Court of the United States for the
District of.....

.....	}	In Bankruptcy.
In the matter of		
.....		
Bankrupt.		
.....		

At....., in said District, on the.....day
 of....., A. D., before.....,
 referee in bankruptcy.

The following is a list of creditors who have this
 day proved their debts:

Names of Creditors.	Residence.		Debts Proved.	
			§	c.

.....,
 Referee in Bankruptcy.

**Form No. 20.—General Letter of Attorney-In-Fact
When Creditor is Not Represented by Attorney
At Law.**

In the District Court of the United States for the
.....District of.....

.....	}	In Bankruptcy.
In the matter of		
.....		
Bankrupt.		
.....		

To.....:

.....

I,, of....., in
the County of.....and State of.....,
do hereby authorize you, or any one of you, to attend
the meeting or meetings of creditors of the bankrupt
aforesaid, at a court of bankruptcy, wherever adver-
tised or directed to be holden, on the day and at the
hour appointed and notified by said court in said
matter, or at such other place and time as may be
appointed by the court for holding such meeting or
meetings, or at which such meeting or meetings, or
any adjournment or adjournments thereof may be
held, and then and there from time to time, and as
often as there may be occasion, for me and in my
name to vote for or against any proposal or resolu-
tion that may be then submitted under the Acts of

Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payments of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the day of ,
A. D. . . .

Acknowledged before me this day of ,
A. D. . . .

. ,
(Official character.)

Form No. 21.—Special Letter of Attorney in Fact.

In the District Court of the United States for the
District of.....

.....	}	In Bankruptcy.
In the matter of		
.....		
Bankrupt.		
.....		

To.....,

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at....., on the.....day of....., before....., or any adjournment thereof, and then and there..... for.....and in.....name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

.....(L. S.)

In witness whereof I have hereunto signed my name and affixed my seal the.....day of.....,
 A. D. ...

Signed, sealed, and delivered in presence of

.....

Acknowledged before me this....day of.....,
 A. D. ...

(Official character.)

Form No. 22.—Appointment of Trustee by Creditors.

In the District Court of the United States for the
District of.....

.....	} In Bankruptcy.
In the matter of	
.....	
Bankrupt.	
.....	

At....., in said District, on the
day of....., A. D. ..., before
, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the (here insert the names of the newspapers in which the notice was published), we, whose names are here under written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint....., of....., in the County of..... and State of....., to be the trustee... of the said bankrupt's estate and effects.

Signatures of Creditors.	Residences of the Same.	Amount of Debts.	
		\$	c.

Ordered that the above appointment of trustee.. be, and the same is hereby approved.

.....,
 Referee in Bankruptcy.

Form No. 23.—Appointment of Trustee by Referee.

In the District Court of the United States for the

..... District of.....

.....	}	
In the matter of		
.....		In Bankruptcy.
Bankrupt.		
.....		

At....., in said District, on the..... day
of....., A. D. ..., before.....,
referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the (here insert the names of the newspapers in which notice was published), I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint....., of....., in the County of..... and State of....., as trustee of the same.

.....,
Referee in Bankruptcy.

**Form No. 24.—Notice to Trustee of His
Appointment.**

In the District Court of the United States for the
.....District of

In the matter of }
..... } In Bankruptcy.
Bankrupt. }

To....., of....., in the county of
....., and district aforesaid:

I hereby notify you that you were duly appointed trustee (or one of the trustees) of the estate of the above-named bankrupt at the first meeting of the creditors, on the.....day of....., A. D.

..., and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at.....dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at.....the.....day of
A. D. ...

.....,
Referee in Bankruptcy.

Form No. 25.—Bond of Trustee.

Know all men by these presents: That we,
, of, as principal,
 and, of, and
, of, as sureties,
 are held and firmly bound unto the United States of
 America in the sum ofdollars, in lawful
 money of the United States, to be paid to the said
 United States, for which payment, well and truly to
 be made, we bind ourselves and our heirs, executors,
 and administrators, jointly and severally, by these
 presents.

Signed and sealed thisday of,
 A. D.

The condition of this obligation is such, that
 whereas the above-namedwas, on the
day of, A. D., appointed
 trustee in the case pending in bankruptcy in said
 court, whereinis the bankrupt, and he,
 the said, has accepted said trust with
 all the duties and obligations pertaining thereunto:

Now, therefore, if the said, trustee,
 as aforesaid, shall obey such orders as said court
 may make in relation to said trust, and shall faith-
 fully and truly account for all the moneys, assets,
 and effects of the estate of said bankrupt which
 shall come into his hands and possession, and shall
 in all respects faithfully perform all his official du-
 ties as said trustee, then this obligation to be void;
 otherwise, to remain in full force and virtue.

Signed and sealed in
presence of

.....

.....

.....,	(Seal.)
.....,	(Seal.)
.....,	(Seal.)

Form No. 26.—Order Approving Trustee's Bond.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

It appearing to the Court that.....,
 of....., and in said district, has been
 duly appointed trustee of the estate of the above-
 named bankrupt, and has given a bond with sureties
 for the faithful performance of his official duties,
 in the amount fixed by the creditors (or by order of
 the court), to wit, in the sum of.....dollars,
 it is ordered that the said bond be, and the same is
 hereby, approved.

.....,
 Referee in Bankruptcy.

Form No. 27.—Order That No Trustee Be Appointed.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

.....,
 Referee in Bankruptcy.

Form No. 28.—Order for Examination of Bankrupt.

In the District Court of the United States for the
District of

In the matter of	} In Bankruptcy.
.....	
Bankrupt.	

At....., on the....day of.....,
 A. D. ..

Upon the application of....., trustee of said bankrupt (or creditor of said bankrupt), it is ordered that said bankrupt attend before....., one of the referees in bankruptcy of this court, at.....on the....day of....., at.....o'clock in the.....noon, to submit to examination under the acts of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

.....,
 Referee in Bankruptcy.

Form No. 29.—Examination of Bankrupt or Witness.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At, in said district, on the.....
 day of....., A. D., before.....,
 one of the referees in bankruptcy of said court.

....., of....., in the
 county of....., and State of.....,
 being duly sworn and examined at the time and place
 above mentioned, upon his oath says. (Here insert
 substance of examination of party.)

.....,
 Referee in Bankruptcy.

Form No. 30.—Summons to Witness.

To.....,
:

Whereas....., of.....,
 in the county of....., and State of
, has been duly adjudged bankrupt,
 and the proceeding in bankruptcy is pending in the
 District Court of the United States for the.....
 District of.....,

These are to require you, to whom this summons
 is directed, personally to appear before.....,
 one of the referees in bankruptcy of the said court,
 at....., on the.....day of.....,
 at.....o'clock in the.....noon, then and
 there to be examined in relation to said bankruptcy.

Witness the Honorable.....
 Judge of said court, and the seal thereof at.....,
 this.....day of....., A. D.

.....,
 Clerk.

Return of Summons to Witness.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

On this.....day of....., A. D.
 ..., before me came....., of

....., in the county of.....,
 and State of....., and makes oath, and
 says that he did, on....., the.....day of
, A. D. ..., personally served
, of....., in
 the county of.....and State of.....
, with a true copy of the summons hereto
 annexed, by delivering the same to him; and he fur-
 ther makes oath, and says that he is not interested
 in the proceeding in bankruptcy named in said
 summons.

Subscribed and sworn to before me this.....
 day of....., A. D. ...

.....

Form No. 31.—Proof of Unsecured Debt.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At....., in said district of.....
, on the.....day of.....,
 A. D., came....., of
, in the county of.....,
 in said district of....., and made oath,
 and says that....., the person
 by (or against) whom a petition for adjudication of
 bankruptcy has been filed, was at and before the
 filing of said petition, and still is, justly and truly
 indebted to said deponent in the sum of.....
 dollars; that the consideration of said debt is as
 follows:

 that no part of said debt has been paid (except....
)
 that there are no set-offs or counterclaims to the
 same (except
)
 and that deponent has not, nor has any person by
 his order, or to his knowledge or belief, for his use,

had or received any manner of security for said debt whatever.

.....,

Creditor.

Subscribed and sworn to before me this.....
day of, A. D. ...

.....,

(Official character.)

Form No. 32.—Proof of Secured Debt.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

At....., in said district of.....
, on the.....day of.....,
 A. D., came....., of
, in the county of.....,
 in said district of....., and made oath,
 and says that....., the person
 by (or against) whom a petition for adjudication of
 bankruptcy has been filed, was as and before the
 filing of said petition, and still is, justly and truly
 indebted to said deponent, in the sum of.....
 dollars, and the consideration of said debt is as fol-
 lows:
; that no part of said debt has
 been paid (except.....);
 that there are no set-offs or counterclaims to the
 same (except.....); and
 that the only securities held by this deponent for
 said debt are the following:

.....,
 Creditor.

Subscribed and sworn to before me this.....
 day of....., A. D. ...

.....,
 (Official character.)

Form No. 33.—Proof of Debt Due Corporation.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

At....., in said district of.....
, on the.....day of.....,
 A. D., came.....,of
, in the county of.....,
 and State of....., and made oath and
 says that he is..... of the.....,
 a corporation incorporated by and under the laws of
 the State of....., and carrying on busi-
 ness at, in the county of.....
, and State of....., and that he
 is duly authorized to make this proof, and says that
 the said....., the person by (or against)
 whom a petition for adjudication of bankruptcy has
 been filed, was at and before the filing of the said
 petition, and still is justly and truly indebted to
 said corporation in the sum of.....
 dollars; that the consideration of said debt is as fol-
 lows:

; that no part of said debt
 has been paid (except.....)
);

that there are no set-offs or counterclaims to the same (except.....);
);
 and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

.....,
of said Corporation.

Subscribed and sworn to before me this.....
 day of....., A. D. ...

.....,
 (Official character.)

Form No. 34.—Proof of Debt by Partner.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At....., in said district of.....
, on the.....day of.....,
 A. D. ..., came....., of
, in the county of.....,
 in said district of....., and made oath
 and says that he is one of the firm of.....,
 in said district of....., consisting of
 himself and....., of.....
, in the county of..... and
 State of.....; that the said.....
, the person by (or against) whom
 a petition for adjudication of bankruptcy has been
 filed, was at and before the filing of said petition,
 and still is, justly and truly indebted to this de-
 ponent's said firm in the sum of.....
 dollars; that the consideration of said debt is as fol-
 lows:
;
 that no part of said debt has been paid (except....
);
 that there are no set-offs or counterclaims to the

same (except
);
 and this deponent has not, nor has his said firm, nor
 has any person by their order, or to this deponent's
 knowledge or belief, for their use, had or received ,
 any manner of security for said debt whatever.

.....,

Creditor.

Subscribed and sworn to before me this.....
 day of....., A. D.

.....,

(Official character.)

Form No. 35.—Proof of Debt by Agent or Attorney.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At....., in said district of.....
, on the.....day of.....,
 A. D. .., came....., of.....,
 in the county of..... and State of
, attorney (or authorized agent) of
, in the county of.....,
 and State of....., and made oath and
 says that....., the person by
 (or against) whom a petition for adjudication of
 bankruptcy has been filed, was at and before the
 filing of said petition, and still is, justly and truly
 indebted to the said....., in
 the sum of..... dollars; that the con-
 sideration of said debt is as follows:
;
 that no part of said debt has been paid (except.....);
 and that this deponent has not, nor has any person
 by his order, or to this deponent's knowledge or be-
 lief, for his use had or received any manner of
 security for said debt whatever. And this deponent

further says that this deposition can not be made
by the claimant in person because.....

.....
.....
and that he is duly authorized by his principal to
make this affidavit, and that it is within his knowl-
edge that the aforesaid debt was incurred as and for
the consideration above stated, and that such debt,
to the best of his knowledge and belief, still remains
unpaid and unsatisfied.

.....
Subscribed and sworn to before me this.....
day of....., A. D.

.....,
(Official character.)

Form No. 36.—Proof of Secured Debt by Agent.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

At....., in said district of.....
, on the.....day of.....,
 A. D. ..., came....., of.....,
 in the county of..... and State of
, attorney (or authorized agent) of
, in the county of.....,
 and State of....., and made oath and
 says that....., the person by
 (or against) whom a petition for adjudication of
 bankruptcy has been filed, was at and before the
 filing of said petition, and still is, justly and truly
 indebted to the said....., in
 the sum of..... dollars; that the con-
 sideration of said debt is as follows:
;
 that no part of said debt has been paid (except.....
);
 and that there are no set-offs or counterclaims to the
 same (except
);

that the only securities held by said
 for said debt are the following:

.....
;
 and this deponent further says that this deposition
 can not be made by the claimant in person because

.....

 and that he is fully authorized by his principal to
 make this deposition, and that it is within his knowl-
 edge that the aforesaid debt was incurred as and for
 the consideration above stated.

.....
 Subscribed and sworn to before me this.....
 day of....., A. D. ...

.....,
 (Official character.)

Form No. 37.—Affidavit of Lost Bill, or Note.

In the District Court of the United States for the
.....District of

In the matter of }
..... } In Bankruptcy.
Bankrupt. }

On thisday of....., A. D.
..., at.....came....., of.....
....., in the county of....., and
State of....., and makes oath and says
that the bill of exchange (or note), the particulars
whereof are underwritten, has been lost under the
following circumstances, to-wit:
.....
.....
and that he, his deponent, has not been able to find
the same; and this deponent further says that he has
not, nor has the said....., or any person
or persons to their use, to this deponent's knowledge
or belief, negotiated the said bill (or note), nor in
any manner parted with or assigned the legal or
beneficial interest therein, or any part thereof; and
that he, this deponent, is the person now legally and
beneficially interested in the same.

Bill or Note above referred to.

Date.	Drawer Or Maker.	Acceptor.	Sum.	

Subscribed and sworn to before me this.....
day of....., A. D. ..

.....,
(Official character.)

Form No. 38.—Order Reducing Claim.

In the District Court of the United States for the
District of

In the matter of

 Bankrupt. } In Bankruptcy.

At....., in said district, on the.....
 day of....., A. D. ..

Upon the evidence submitted to this court upon
 the claim of.....against said estate
 (and, if the fact be so, upon hearing counsel thereon)
 it is ordered, that the amount of said claim be re-
 duced from the sum of....., as set forth
 in the affidavit in proof of claim filed by said creditor
 in said case, to the sum of....., and that
 the latter-named sum be entered upon the books of
 the trustee as the true sum upon which a dividend
 shall be computed (if with interest, with interest
 thereon from the.....day of.....,
 A. D. ..).

.....,
 Referee in Bankruptcy.

Form No. 39.—Order Expunging Claim.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At....., in said district, on the.....
 day of....., A. D. ..

Upon the evidence submitted to the court upon
 the claim of.....against said estate
 (and, if the fact be so, upon hearing the counsel
 thereon) it is ordered, that said claim be disallowed
 and expunged from the list of claims upon the trustee's record in said case.

.....,
 Referee in Bankruptcy.

**Form No. 40.—List of Claims and Dividend to be
Recorded by Referee and by Him Delivered
To Trustee.**

In the District Court of the United States for the
.....District of

In the matter of }
..... } In Bankruptcy.
Bankrupt. }

At....., in said district, on the.....
day of, A. D. ..

A list of debts proved and claimed under the
bankruptcy of.....with.....
dividend at the rate of.....per cent this day de-
clared thereon by....., a referee in
bankruptcy.

No.	Creditors. (To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth).	Sum Proved.		Dividend.	
		Dollars	Cents.	Dollars	Cents

.....,
Referee in Bankruptcy.

Form No. 41.—Notice of Dividend.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

At....., on the.....day of.....,

To.....

Creditor of....., bankrupt:

I hereby inform you that you may, on application
 at my office,, on the.....day of
, or on any day thereafter, between
 the hours of....., receive a warrant for
 the.....dividend due to you out of the
 above estate. If you can not personally attend, the
 warrant will be delivered to your order on your fill-
 ing up and signing the subjoined letter.

.....,

Trustee.

Creditor's Letter to Trustee.

To.....

Trustee in bankruptcy of the estate of.....
, bankrupt:

Please deliver to.....the
 warrant for dividend payable out of the said estate
 to me.

.....,

Creditor.

**Form No. 42.—Petition and Order for Sale by
Auction of Real Estate.**

In the District Court of the United States for the
.....District of

In the matter of }
..... } In Bankruptcy.
Bankrupt. }

Respectfully represents.....,
trustee of the estate of said bankrupt, that it would
be for the benefit of said estate that a certain por-
tion of the real estate of said bankrupt, to wit: (here
describe it and its estimated value) should be sold by
auction, in lots or parcels, and upon terms and con-
ditions as follows:

Wherefore he prays that he may be authorized to
make sale by auction of said real estate as aforesaid:

Dated this.....day of....., A. D.

...

.....,
Trustee.

The foregoing petition having been duly filed,
and having come on for hearing before me, of which
hearing ten days' notice was given by mail to credi-
tors of said bankrupt, now, after due hearing, no ad-
verse interest being represented thereat (or thereto)
it is ordered that the said trustee be authorized to

sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this day of ,
A. D.

. ,
Referee in Bankruptcy.

Form No. 43.—Petition and Order for Redemption of Property from Lien.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

Respectfully represents.....,
 trustee of the estate of said bankrupt, that a certain
 portion of said bankrupt's estate, to-wit: (here de-
 scribe the estate or property and its estimated value)
 is subject to a mortgage (describe the mortgage), or
 to a conditional contract (describing it), or to a lien
 (describe the origin and nature of the lien) (or, if the
 property be personal property, has been pledged or
 deposited and is subject to a lien) for (describe the
 nature of the lien) and that it would be for the benefit
 of the estate that said property should be redeemed
 and discharged from the lien thereon. Wherefore
 he prays that he may be empowered to pay out of
 the assets of said estate in his hands the sum of
, being the amount of said lien, in
 order to redeem said property therefrom.

.....,
 Trustee.

The foregoing petition having been duly filed and
 having come on for a hearing before me, of which

hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, being represented thereat (or after hearing..... in favor of said petition and..... in opposition thereto) it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of....., being the amount of the lien in order to redeem the property therefrom.

Witness my hand this.....day of.....,
A. D. ..

.....,
Referee in Bankruptcy.

Form No. 44.—Petition and Order for Sale Subject to Lien.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

Respectfully represents....., trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: (here describe the estate or property and its estimated value) is subject to a mortgage (describe mortgage) or to a conditional contract (describe it), or to a lien (describe the origin and nature of the lien) or (if the property be personal property) has been pledged or deposited and is subject to a lien for (describe the nature of the lien) and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

.....,
 Trustee.

.....,
 Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which

hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, being represented thereat (or after hearing.....
in favor of said petition and.....
 in opposition thereto) it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction (or at private sale), keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this.....day of.....,
 A. D. ..

.....,
 Referee in Bankruptcy.

Form No. 45.—Petition and Order for Private Sale.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

Respectfully represents.....,
 trustee of the estate of said bankrupt, that for the
 following reasons, to wit:

.....

 it is desirable and for the best interest of the estate
 to sell at private sale a certain portion of the said
 estate, to wit:

.....

 Wherefore he prays that he may be authorized to
 sell the said property at private sale.

Dated this.....day of....., A. D.

..

.....,
 Trustee.

The foregoing petition having been duly filed and
 having come on for a hearing before me, of which
 hearing ten days' notice was given by mail to credi-
 tors of said bankrupt, now, after due hearing, being
 represented thereat (or after hearing.....
in favor of said petition and.....

.....in opposition thereto) it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold, which said account he shall file at the office with the referee.

Witness my hand this.....day of.....,
A. D. ..

.....,
Referee in Bankruptcy.

**Form No. 46.—Petition and Order for Sale of
Perishable Property.**

In the District Court of the United States for the
.....District of

In the matter of }
..... } In Bankruptcy.
Bankrupt. }

Respectfully represents.....
the said bankrupt (or a creditor or the receiver, or
the trustee of the said bankrupt's estate).

That a part of the estate, to wit:
.....
now in....., is perishable, and that there
will be a loss if the same is not sold immediately.

Wherefore he prays the court to order that the
same be sold immediately as aforesaid.

Dated this.....day of....., A. D.
..

.....,

The foregoing petition having been duly filed and
having come on for a hearing before me, of which
hearing ten days' notice was given by mail to the
creditors of the said bankrupt (or without notice to
the creditors), now, after due hearing, no adverse
interest being represented thereat (or after hearing
.....in favor of said petition
and.....in opposition thereto),

I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is therefore ordered that the same be sold forthwith and the proceeds thereof deposited in court.

Witness my hand this.....day of.....,
A. D.

.....

Referee in Bankruptcy.

Form No. 47.—Trustee's Report of Exempted Property.

In the District Court of the United States for the
.....District of

In the matter of }
..... } In Bankruptcy.
Bankrupt. }

At....., on the.....day of.....,
.....

The following is a schedule of property designated and set apart to be retained by the bankrupt afore-said, as his own property, under the provisions of the acts of Congress relating to bankruptcy:

General Head	Particular Description.	Value.	
Military uniforms, arms and equipments..... Property exempted by State laws.....		\$	cts.

.....,
Trustee.

Form No. 48.—Trustee's Return of No Assets.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

At....., in said district, on the.....
 day of....., A. D.

On the day aforesaid before me comes.....
, of....., in the county of
 and State of....., and
 makes oath, and says that he, as trustee of the estate
 and effects of the above-named bankrupt, neither
 received nor paid any moneys on account of the estate.

Subscribed and sworn to before me at.....,
 this.....day of....., A. D.

.....
 Referee in Bankruptcy.

Form No. 50.—Oath to Final Account of Trustee.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

On this.....day of....., A. D.
, before me comes.....,
 of....., in the county of.....,
 and State of....., and makes oath, and
 says that he was, on the.....day of.....,
 A. D., appointed trustee of the estate and ef-
 fects of the above-named bankrupt, and that as such
 trustee he has conducted the settlement of the said
 estate. That the account hereto annexed containing
sheets of paper, the first sheet whereof is
 marked with the letter.....(reference may here
 also be made to any prior account filed by said trust-
 ee) is true, and such account contains entries of
 every sum of money received by said trustee on ac-
 count of the estate and effects of the above-named
 bankrupt, and that the payments purporting in such
 account to have been made by said trustees have
 been so made by him. And he asks to be allowed for
 said payments and for commissions and expenses as
 charged in said accounts.

.....,
 Trustee.

Subscribed and sworn to before me at.....,
 in said.....district of....., this
day of....., A. D. ..

.....,
 (Official character.)

**Form No. 51.—Order Allowing Account and
Discharging Trustee.**

In the District Court of the United States for the
.....District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered, that the same be allowed, and that the said trustee be discharged of his trust.

.....,
Referee in Bankruptcy.

Form No. 52.—Petition for Removal of Trustee.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

To the Honorable.....:
 Judge of the District Court for the.....
 District of.....:

The Petition of....., one
 of the creditors of said bankrupt, respectfully rep-
 resents that it is for the interest of the estate of said
 bankrupt that....., heretofore
 appointed trustee of said bankrupt's estate, should
 be removed from his trust, for the causes following,
 to wit: (here set forth the particular cause or causes
 for which such removal is requested).

Wherefore.....pray that
 notice may be served upon said.....,
 trustee as aforesaid, to show cause, at such time as
 may be fixed by the court, why an order should not
 be made removing him from said trust.

.....

Form No. 53.—Notice of Petition for Removal of Trustee.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At....., on the.....day of.....,
 A. D.

Trustee of the estate of.....,
 bankrupt:

You are hereby notified to appear before this
 court, at....., on the.....day of.....,
 A. D., at.....o'clockm., to show cause
 (if any you have) why you should not be removed
 from your trust as trustee as aforesaid, according to
 the prayer of the petition of....., one
 of the creditors of said bankrupt, filed in this court
 on the.....day of....., A. D.,
 in which it is alleged (here insert the allegation of
 the petition).

.....,
 Clerk.

Form No. 54.—Order for Removal of Trustee.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

Whereas....., of....., did
 on the.....day of....., A. D.,
 present his petition to this court, praying that for
 the reasons therein set forth,, the
 trustee of the estate of said....., bank-
 rupt, might be removed:

Now, therefore, upon reading the said petition
 of the said....., and the evidence
 submitted therewith, and upon hearing counsel on
 behalf of said petitioner and counsel for the trustee,
 and upon the evidence submitted on behalf of said
 trustee,

It is ordered that the said.....be
 removed from the trust as trustee of the estate of
 said bankrupt, and that the costs of the said peti-
 tioner incidental to said petition be paid by said
, trustee (or, out of the estate
 of said....., subject to prior charges).

Witness the Honorable....., judge
 of the said court, and the seal thereof, at.....,
 in said District, on the.....day of.....,
 A. D.

[Seal of]
 [the court.]

.....,
 Clerk.

Form No. 55.—Order for Choice of New Trustee.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

At....., on the.....day of.....,
 A. D.

Whereas by reason of the removal (or death or resignation) of....., heretofore appointed trustee of the estate of said bankrupt a vacancy exists in the office of said trustee.

It is ordered, that a meeting of the creditors of said bankrupt be held at....., in..... in said District, on the.....day of....., A. D. ..., for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors, of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

.....,
 Referee in Bankruptcy.

Form No. 56.—Certificate by Referee to Judge.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

I,, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings; (here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon).

And the said question is certified to the judge for his opinion thereon.

Dated at....., the.....day of
, A. D.

.....,
 Referee in Bankruptcy.

Form No. 57.—Bankrupt's Petition for Discharge.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

To the Honorable.....,

Judge of the District Court of the United States
 for the District of..... of.....and State
 of....., in said District, respectfully repre-
 sents that on the.....day of.....last past,
 he was duly adjudged bankrupt under the Acts of
 Congress relating to bankruptcy; that he has duly
 surrendered all his property and rights of property,
 and has fully complied with all the requirements of
 said Acts and of the orders of the court touching his
 bankruptcy,

Wherefore he prays that he may be decreed by
 the court to have a full discharge from all debts
 provable against his estate under said bankrupt Acts,
 except such debts as are excepted by law from such
 discharge.

Dated this.....day of.....,
 ...

.....,
 Bankrupt.

Order of Notice Thereon.

District of.....—ss:

On this.....day of....., A. D.,
on reading the foregoing petition, it is

Ordered by the court that a hearing be had upon
the same on the.....day of....., A. D.
....before said court, at....., in said Dis-
trict at.....o'clock in the.....noon; and that
notice thereof be published in....., a
newspaper printed in said District, and that all
known creditors and other persons in interest may
appear at the said time and place and show cause,
if any they have, why the prayer of the said peti-
tioner should not be granted.

And it is further ordered by the court, that the
clerk shall send by mail to all known creditors copies
of said petition and this order, addressed to them
at their places of residence as stated.

Witness the Honorable....., judge
of the said court and the seal thereof, at.....,
in said District, on the.....day of.....,
A. D. ...

.....,

Clerk.

[Seal of]
[the court.]

.....hereby deposes, on oath, that
the foregoing order was published in the.....
on the following.....days, viz.:

On the.....day of..... that on the
day of..... in the year ...
 District of.....

Personally appeared....., and made
 oath that the foregoing statement by him subscribed
 is true.

.....,

(Official character.)

I hereby certify that I have on this.....day
 of....., A. D. ... sent by mail copies
 of the above order, as therein directed.

.....,

Clerk.

Form No. 58.—Specification of Grounds of Opposition to Bankrupt's Discharge.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

....., of....., in the County
 of..... and State of....., a
 party interested in the estate of said.....,
 bankrupt, do hereby oppose the granting to him of
 a discharge from his debts, and for the grounds of
 such opposition do file the following specification:
 (Here specify the grounds of opposition.)

.....,
 Creditor.

Form No. 59.—Discharge of Bankrupt.

District Court of the United States,

.....District of.....

Whereas,, of.....
in said District, has been duly adjudged a bankrupt
under the Acts of Congress relating to bankruptcy,
and appears to have conformed to all the require-
ments of law in that behalf, it is thereof ordered by
this court that said.....be discharged
from all debts and claims which are made provable
by said Acts against his estate, and which existed
on the.....day of....., A. D. ...
on which day the petition for adjudication was filed
.....him; excepting such debts as are by law ex-
cepted from the operation of a discharge in bank-
ruptcy.

Witness the Honorable....., judge of
said District Court, and the seal thereof this.....day
of....., A. D. ...

.....,

Clerk.

[Seal of]
[the court.]

Form No. 60.—Petition for Meeting to Consider Composition.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

To the Honorable.....,
 Judge of the District Court of the United States
 for the.....District of.....:

The above named bankrupt respectfully represents that a composition of.....per cent upon all unsecured debts, not entitled to a priority..... in satisfaction of.....debts has been proposed by.....to..... creditors, as provided by the Acts of Congress relating to bankruptcy and.....verily believe that the said composition will be accepted by a majority in number and in value of..... creditors whose claims are allowed.

Wherefore, he prays that a meeting of..... creditors may be duly called to act upon said proposal for a composition according to the provisions of said Acts and the rules of court.

.....,
 Bankrupt.

Form No. 61.—Application for Confirmation of Composition.

In the District Court of the United States for the
.....District of

In the matter of	}	
.....		In Bankruptcy.
Bankrupt.		

To the Honorable.....,
Judge of the District Court of the United States,
for the.....District of.....

At....., in said District, on the
.....day of....., A. D. .., now
comes....., the above-named bank-
rupt, and respectfully represents to the court that,
after he had been examined in open court (or, at a
meeting of his creditors) and had filed in court a
schedule of his property and a list of his creditors,
as required by law, he offered terms of composition
to his creditors, which terms have been accepted in
writing by a majority in number of all creditors
whose claims have been allowed, which number
represents a majority in amount of such claims; that
the consideration to be paid by the bankrupt to his
creditors, the money necessary to pay all debts which
have priority, and the costs of the proceedings,
amounting in all to the sum of.....dollars,
has been deposited, subject to the order of the judge,
in the.....National Bank, of.....,

a designated depository of money in bankruptcy cases.

Wherefore the said.....respectfully asks that the said composition may be confirmed by the court.

.....,
Bankrupt.

Form No. 62.—Order Confirming Composition.

In the District Court of the United States for the
District of

In the matter of }
 } In Bankruptcy.
 Bankrupt. }

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the Acts of Congress relating to bankruptcy; It is therefore ordered that the said composition be and it is hereby confirmed.

Witness the Honorable....., judge
 of said court, and the seal thereof, this.....day
 of....., A. D. ...

[Seal of]
 [the court.]

.....,
 Clerk.

Form No. 63.—Order of Distribution on Composition.

United States of America.

In the District Court of the United States for the
District of

In the matter of	}	In Bankruptcy.
.....		
Bankrupt.		

The composition offered by the above-named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit shall be made by the clerk of the court as follows, to-wit: 1st, to pay the several claims which have priority; 2nd, to pay the costs of the proceedings; 3rd, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness the Honorable....., judge
 of said court, and the seal thereof, this.....day
 of....., A. D. ...

.....,
 Clerk.

[Seal of]
 [the court.]

APPENDIX C.

THE INTERSTATE COMMERCE ACT.

AS AMENDED.

[Hepburn bill amendments in bold-faced type.]

An Act to Regulate Commerce.

PARTIES SUBJECT TO THE ACT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: **That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same**

Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier," as used in this Act, shall include express companies and sleeping car companies. The term "railroad," as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespec-

tive of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any services rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to

enter and those returning home after discharge and boards of managers of such homes; to necessary caretakers of live stock, poultry and fruit; to employees on sleeping cars, express cars, and the linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company

to transport from any State, Territory, or District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commis-

sion may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

REPEALED

[Section I. That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transporta-

tion" shall include all instrumentalities of shipment or carriage.

REPEALED

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.]

Unjust Discrimination Defined and Forbidden.

Section 2. That if any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Undue or Unreasonable Preference or Advantage Forbidden.

Section 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, com-

pany, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Long and Short Haul Provision.

Section 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Commission

appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

Pooling of Freights and Division of Earnings Forbidden.

Section 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Published Tariffs Must Show All Rates, Fares and Charges.

Section 6. That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other

carrier by railroad, by pipe line, or by water when a through route or joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot

or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the Commission may, in its discretion and for good cause show, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and

each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges

so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: Provided, That wherever the word "carrier" occurs in this Act it shall be held to mean "common carrier."

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

REPEALED

[Section 6. That every common carrier subject to the provisions of this Act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States

shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States, from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

REPEALED

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for

REPEALED

copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to

any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any service in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon, than is specified in the schedule filed with the Commission in force at the time.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

REPEALED If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.]

Continuous Carriage of Freights.

Section 7. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

Liability of Common Carriers for Damages.

Section 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case

of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

**Persons Claiming to be Damaged May Elect
Whether to Complain to the Commission or
Bring Suit in a United States Court.**

Section 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Section 10. That any common carrier subject to

the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: Provided, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment in the discretion of the court.

Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who,

by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and wilfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and wilfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be

subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

If any such person or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Interstate Commerce Commission Created.

Section 11. That a commission is hereby created and established to be known as the Interstate Com-

merce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Power and Duty of Commission to Inquire Into Business of Carriers.

Section 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers sub-

ject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the pro-

duction of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such deposition may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of the United States, or any notary public, not being

of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Complaints to Commission. How and by Whom Made. How Served Upon Carriers.

Section 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own

motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Reports and Decisions of the Commission.

Section 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several states without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

[Section 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.]

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All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several states, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.]

Commission Given Power to Fix a Reasonable Maximum Rate.

Section 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or upon complaint of any common carrier, it shall be the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in

the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission shall find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and

reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The Commission may also, after hearing of a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

REPEALED

[Section 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.]

Commission May Award Damages.

Section 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

If a carrier does not comply with an order for the

payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: Provided, That claims accrued prior to the passage of this Act may be presented within one year.

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and

against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this Act shall be

payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the

order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of "An Act to

expedite the hearing and determination of suits in equity, and so forth," approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: Provided, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: Provided further, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

The copies of schedules and tariffs of rates, fares,

and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.

Rehearings by the Commission.

Section 16a. That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon

shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

REPEALED [Section 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this Act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the

premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of

execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented to the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

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If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this Act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to

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said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining he or they shall be entitled to recover reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this Act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.]

Interstate Commerce Commission. Form of Procedure.

Section 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulations of proceedings be-

fore it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

Former Salary of Commissioners.

Section 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred

by the Commissioners, or by their employees under their orders, in making any investigations or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Sessions of the Commission.

Section 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expenses prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Commission Authorized to Require Annual Reports.

Section 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same;

the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation sub-

ject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provision of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereof. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commis-

sion, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Any person who shall wilfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall wilfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall wilfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor

more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused

by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contracts, receipts, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

REPEALED [Section 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid; the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salary paid each class; the amounts expended for improvements each year, how ex-

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pended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.]

Annual Reports of the Commission to Congress.

Section 21. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

Persons and Property That May be Carried Free or at Reduced Rates.

Section 22. That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' orphan homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: Provided, That no pending litigation shall in any way be affected by this Act: Provided further, That

nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act

shall apply to any violation of the requirements of this proviso.

Jurisdiction of Courts to Issue Writs of Peremptory Mandamus Commanding the Movement of Interstate Traffic or the Furnishing of Cars or Other Transportation Facilities.

Section 23. That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: Provided, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: Provided, That the remedy hereby given by writ of mandamus

shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

Commission Enlarged to Seven Members With Salaries of \$10,000.

Section 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party.

[In the following sections—which are from the

Hepburn Act—the words “this Act” refer only to the Hepburn Act.—Eds.]

Attendance of Witnesses and Production of Evidence.

Additional Section. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

Additional Section. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Additional Section. That this Act shall take effect and be in force from and after its passage.*

Approved February 11, 1887; amended March 2, 1889; February 10, 1891; February 8, 1895; and June 29, 1906.

*Note.—By a joint resolution adopted after the passage of the Hepburn Act, it was provided that this Act should go into effect sixty days after June 29, 1906.

[A summary of further amendments made by Congress in 1920 to the Interstate Commerce Act will be found in Part IV of the volume entitled “Railway Transportation—History, Operation and Regulation.”—Ed.]

The Elkins Act

AS AMENDED.

[Hepburn bill amendments in bold-faced type.]

An Act to further regulate commerce with foreign nations and among the States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

What Constitutes a Misdemeanor on the Part of a Corporation.

Section 1. That anything done or omitted to be done by a corporation common carrier, subject to the **Act to regulate commerce and the Acts amendatory thereof**, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said **Acts** or under this **Act**, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said **Acts** or by this **Act** with reference to such persons, except as such penalties are herein changed. The wilful failure upon the part of any carrier subject to said **Acts** to file and publish the tariffs or rates and charges as required by said **Acts**, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less

than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall knowingly offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: Provided, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act, to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States

having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country who shall knowingly by employee, agent,

officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedule of rates provided for in this Act, shall in addition to any penalty provided by this Act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such persons, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

REPEALED

[Section 1. That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for

REPEALED

or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Act or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which

violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

REPEALED

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate Commerce or Acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.]

Persons Interested in Cases May be Made Parties and Shall be Subject to Orders or Decrees.

Section 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested, or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same man-

ner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

**Proceedings to Enjoin or Restrain Departures from
Published Rates or Any Discrimination Pro-
hibited by Law Against Carriers and Par-
ties Interested in Traffic.**

Section 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs,

and process, which said orders, writs, and process may be enforceable as well as against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled An Act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: Provided, That the provisions of an Act entitled

“An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies,’ ‘An Act to regulate commerce,’ approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three,” shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Conflicting Laws Repealed.

Section 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

Section 5. That this Act shall take effect from its passage.

Approved February 19, 1903; amended June 29, 1906.

[Note.—For a summary of Federal legislation affecting Interstate Commerce up to and including the year 1920, see Part IV of the volume on “Railway Transportation.”]

QUIZ QUESTIONS

CHAPTER I.

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2. In what order do they arise?

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1. Give the principal divisions of the law.

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2. What are the five requisites for a valid contract?
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1. How many parties may there be to a contract?
2. What classes of persons lack the power of contracting, either wholly or in part?

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